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Strikes and the legal rights and liabilities of strikers seem to be growing subjects of judicial consideration, the number of cases involving questions of that character increasing much of late. We observe in a recent issue of the *Chicago Legal News* a report of the case of Frazer & Chalmers v. Iron Moulders Union, wherein Judge Windes of the Circuit Court of Cook County holds that, in case of a strike, upon a bill by the employer to enjoin striking employees from aggressive acts, while an injunction is proper, in so far as it prohibits the defendants from the use of force, violence and intimidation toward any one employed by the complainant, or any one seeking employment from him, in no event should the injunction go beyond the prohibition of any acts by the defendants which are not in themselves unlawful, whatever may be the effect of such acts upon the business and property of the complainant; that none of the authorities go to the extent of justifying a resort to the extraordinary remedy of injunction to restrain the doing of acts not illegal, unless illegal means are employed to accomplish the act.

The consideration of the question by Judge Windes arose upon an application made to modify an injunction, previously granted by a circuit judge, which not only enjoined the defendants from acts direct and indirect of force, violence and intimidation, direct and indirect threats and from congregating about the approach of complainant's premises for the purpose of picketing or talking to prospective workmen, but also restrained them from going to the homes of employees of complainant, or proposed employees, and endeavoring to persuade them to refrain from entering the employ of the complainant.

The court holds that the law permits the defendants to combine; that they may use any peaceable and reasonable means to gain an advantage for themselves, and that it follows that they may persuade and entreat others to join them, so long as they do not in their attempts at persuasion, resort to force, violence, threats, taunts, jeers, or intimidation and that persuasion or entreaty must not be accompanied by a manner that will make it amount to intimidation.

It seems that the public press has given the impression that this decision is a radical departure in favor of striking laborers from the various decisions of courts which have granted injunctions against striking emyloyers. This construction and view of the conclusion of the court is unwarranted. The decision retains the injunction in force against the actual interference by the strikers with prospective workmen, restrains all force and intimidation, but avers the right of the strikers to visit workmen at their homes and the right to there argue with or persuade such workmen to join their cause. This doctrine is absolutely sound in law and in entire accord with the precedents on the subject.

An odd question has been raised in an English case—Gordon v. Street—as we learn from a recent issue of the *London Law Journal*. The question was one upon which there is not much authority, viz: what right there is, in the absence of fraud, of rescinding an agreement made under a mistake as to the other party's identity. The defendant had obtained a loan from, and given a promissory note to, the plaintiff, a notorious money-lender, who had assumed the name of Addison for the purposes of his business. Subsequently, when the defendant found out who his creditor really was, he claimed to be entitled to repudiate the contract, on payment of the money actually advanced with a reasonable sum by way of interest. For a rule of general application in cases of mistake reference was made to Smith v. Wheatcroft, 47 Law J. Rep. Chanc. 745; L. R. 9 Chanc. Div. 223. There Mr. Justice Fry, following a principle laid down by Pothier in his "Traite des Obligations," held that an error as to the person with whom a contract is made annuls the contract when personal considerations enter into it, but not when the party who seeks to repudiate it would have been equally willing to contract with any other person. The court of appeal seems to have approved of this decision. They would apparently have held, if on their view of the case it had been necessary—and held rightly, we think—that the character of the money-lender, at whose mercy the borrower would needs be in case of default, might in a particular case in-

fluence the latter when he came to decide whether he would have the former for a creditor. Yet great caution would have to be used in applying this principle. To allow the borrower to rescind his contract, unless on the clearest proof that he was influenced by not knowing who the lender really was, would only be to encourage the dishonest repudiation of agreements. The jury, however, found that the plaintiff had fraudulently concealed his identity, and thereby induced the defendant to enter into the contract, and it was on this finding that the ultimate decision was based. The plaintiff contended that such a fraud was not material to the contract. When the day of payment came, said his counsel, the defendant would by law have to pay the agreed sum to the person to whom he had contracted to pay it, and it mattered not to him who that person was. The court, however, held that the question was not whether the fraud was material to the contract, but whether it was "material to the inducement which brought about the contract." The gist of their judgment is that a party who has practiced deception for a particular end, which he has obtained by means of the deception, cannot be allowed to speculate or argue about the materiality of his fraud. A lower legal standard of morality would fall short of what common honesty requires.

NOTES OF IMPORTANT DECISIONS.

PRINCIPAL AND AGENT—RIGHT OF AGENT TO DRAW AWAY PRINCIPAL'S CUSTOMERS—INJUNCTION AGAINST ADVICE TO BREAK CONTRACTS.—In Proctor & Collier Co. v. Mahin, 93 Fed. Rep. 875, decided by the United States Circuit Court, N. D. Illinois, the general proposition was held that an agent who has ceased to represent his principal and gone into the same line of business for himself may lawfully solicit the future business of his former principal's customers. The suit was for an injunction, and the court referred it to a master, to report whether the defendant had made use of information obtained from a book or books belonging exclusively to the complainant, denying the application for a preliminary injunction. It was further held, under the circumstances as they were made to appear upon such application, that although an agent may have no right to advise customers to break their existing contracts with his former principal, the application for injunctive relief would be denied, since the remedy at law was presumptively ample.

CONTRACT—SUBSCRIPTIONS—CONSIDERATION.—In Lasar v. Johnson, 58 Pac. Rep. 161, decided by the Supreme Court of California, it was held that where defendants in an action on a subscription to a social and benevolent organization requested the subscription committee to regard their subscription as cash, and to go on and make arrangements, and obligations were incurred by the committee on the faith of such request, there was a sufficient consideration to make defendants liable on their subscription, though such request was not made at the time of the subscription; that where defendants in an action on a subscription to a charitable purpose, being proprietors of an hotel, agreed with the subscription committee to pay the sum subscribed, on condition that a ball or banquet should be given at their hotel, and a ball was given pursuant to this agreement, there was a good consideration for the promise to pay the sum subscribed; and that the word "entertainment," as used in a subscription for the purpose of entertaining a large number of strangers, constituting an organized body, by the residents and business men of a city, is not synonymous with "board," and limited to the ordinary necessaries of life. As to the last point the appellants contended that expenditures were made which did not come within the purview of this subscription for "entertainment," which, they say, is synonymous with "board," and includes the ordinary necessaries of life. But the court said that "the distinction between entertaining a friend at one's home, or a hotel keeper entertaining a traveler at his hotel, and entertaining a large number of strangers, constituting an organized body, by the residents and business men of a city, is quite apparent; and, as to the latter, what may be included in the entertainment of the visiting body is usually limited by the amount of money available for the purpose, and the ingenuity of the entertainers in devising sources of enjoyment. I think the record does not show that any of the money was expended for purposes not fairly within the meaning and intent of the subscription paper in that regard."

CONTRACTS OBTAINED BY FRAUD.—In Alexander v. Brogley, 43 Atl. Rep. 888, decided by the Court of Errors and Appeals of New Jersey, it appeared that the defendants were induced to sign their names to a printed form of contract for the purchase of a book by a fraudulent representation made to one defendant that he was writing his name only to show how it was spelled, and to the other defendant that he was signing his name only as an autograph. It was held that they were not bound, even though they were negligent in failing to ascertain what was printed on the papers which they signed. "No doubt there are many decisions," says the court, "which hold that, under certain circumstances, a person may be debarred by his negligence from defeating what appears to be his contract, on the ground of fraud. Some of these decisions rest upon the

desirability of preserving general confidence in commercial paper; others upon the legal maxim, '*Caveat emptor;*' others upon the equitable doctrine that, when one of two persons otherwise innocent must suffer, he should suffer whose negligence has allowed the loss to occur; and still others upon the rule of evidence, that, when contracting parties execute a writing supposed to express their contract, that writing becomes the conclusive proof of the terms of their agreement, and, hence, there is cast upon the parties a stringent duty to inform themselves of the real meaning of the instrument signed. The last two classes approach the case in hand, but neither of them includes it. In the first place, the defendants did not know they were signing contracts, and, therefore, were not called upon to exercise that vigilance which such a transaction reasonably demands. They were doing acts which were not intended to have, and, if the representations of the agent had been honest, could not have, any obligatory force or legal effect whatever, and as to which, consequently, there was no legal duty of care. In the second place, the plaintiff does not stand in the position of an innocent person. As assignee, he is entitled only to the rights of his assignor; and the assignor is, in legal contemplation, implicated in the fraud of the agent, so far as relates to the enforcement of the alleged contracts from which the defendants have hitherto accepted no benefit. Said Mr. Justice Story in his work on Agency (sec. 139), it is a sound and perfectly well-settled principle that, if a principal seeks to enforce a contract made by his agent, he is as much bound by any material misrepresentation made therein by the agent as made by himself. *A fortiori*, it would seem, a person cannot enforce as a contract that which in truth never was intended to have even the form of a contract, but which has assumed such a form through the fraud of his agent. We know of no just principle, nor have we been referred to any judicial decision, sanctioning the motion that, in circumstances like those before us, a person can, out of the fraud of his own agent and the negligence of a third party, create a contract legally binding upon the latter."

CARRIERS OF GOODS—STOPPAGE IN TRANSITU. —In Branan v. Atlanta & W. P. R. Co., 33 S. E. Rep. 836, decided by the Supreme Court of Georgia, it was held that the right of stoppage *in transitu* of goods sold on credit, when the consignee is insolvent, exists against such consignee and all purchasers from him, until there has been an actual delivery of the goods to the consignee, or to a purchaser under his order; and until such delivery has been made, and possession of the goods obtained, the title of a *bona fide* purchaser from the consignee, without notice, can only be made good against the exercise of such right by an assignment of the bill of lading. The court, after citing and summarizing Railroad Co. v. Meador, 65 Ga. 705, and Steamship Co. v. Ehrlich, 88 Ga. 502, said: "In the case of Calahan v. Babcock, 21 Ohio St. 281, the Supreme Court of Ohio ruled: 'The right of stoppage *in transitu* is regarded with favor, and the ingrafting of further restrictions upon the rule governing it is not warranted by public policy. The right of stoppage *in transitu* is extinguished only by the actual and complete delivery of the goods consigned to the vendee, or to some agent of and for him.' Again, in 37 U. S. App. 268, 16 C. C. A. 232, and 69 Fed. Rep. 302, in the case of McElwee v. Lumber Co., the Circuit Court of Appeals ruled: 'No subsale during transit will defeat the right unless the bill of lading be transferred.' In the case of Loeb v. Peters, 63 Ala. 243, the Supreme Court of Alabama ruled: 'The right of stoppage by the seller is lost when, before it is exercised, the purchaser has sold the goods, and indorsed the bill of lading, to a subpurchaser for value in good faith.' To the same effect, see Becker v. Hallgarten, 86 N. Y. 167, and a large number of cases cited in note 4 to section 2495, 5 Lawson, Rights, Rem. & Prac. The claim of the plaintiffs in error in this case is that the sale made to them by the consignee, and the subsequent recognition of such sale by the carrier, and the agreement on its part to reship the goods, were such a delivery as vested in them title to the goods, free from the right of stoppage *in transitu*. It must be remembered, however, that nothing will defeat this right, except actual possession of the goods by the consignee, or an assignment of the bill of lading, which is a symbolic delivery of the property. Neither of these things was done. Cunningham never did have possession of the goods. The bill of lading was never assigned by him to plaintiffs in error. It cannot be doubted, under the facts which appear in the record, that Branan Bros. purchased the goods in good faith from Cunningham, the consignee; but it cannot be insisted that by such purchase they obtained any better title than Cunningham, the consignee, had when the goods were delivered to the carrier in Danville, Va. The legal effect of such delivery was to vest the title in Cunningham, and it so remained, but the title which he held was subject to the right of the vendor to stop the goods before actual delivery. He could convey to the purchaser from him no more than he had, and, therefore, Branan Bros., taking Cunningham's title, took the tobacco, subject to the right of the vendor to stop it so long as it remained in the hands of the carrier. Holbrook v. Vose, 6 Bosw. 76. If it be said that the goods were not in the hands of the carrier for delivery to the consignee, the reply is that, as long as the company, in any capacity except as agent of the consignee, has control of the goods—whether carrier or warehouseman—the vendor's right is not terminated; for, as long as anything remains to be done in order to complete a delivery to the consignee, that long the right of stoppage *in transitu* endures. 4 Elliott, R. R., p. 2395, and note 3, making reference to a large number of adjudicated cases. There had been no actual de-

livery of the goods either to the consignee or Branan Bros. Under the authority of the Meador case, *supra*, the delivery to the latter was constructive, not actual. Without actual delivery, or the legal symbol of it, the purchaser could not defeat the right. Subject to this right, the purchaser changed the destination, to which change the carrier assented, but while in its hands as carrier before the goods had been started on their new destination, the right to stop was exercised; and so long as they remained in the possession of the carrier, and it had control over them, the right existed in the original vendor, as against the consignee, who had never had them, and a purchaser from them who bought subject to the right."

BILLS AND NOTES—NEGOTIABILITY.—In Louisville Banking Co. v. Gray, 26 South. Rep. 205, the Supreme Court of Alabama decides, that the negotiability of a note is not destroyed by a clause authorizing the payee bank to appropriate on the note, whether or not due, at any time, at its option, without notice or legal proceedings, any money which the maker may have in the bank on deposit or otherwise, on the ground that the date of payment is thereby made uncertain; nor on the ground that the amount to be paid at maturity is uncertain. The court said in part: "But it is said the bank had the right to apply any sum less than the full amount of the note, and, had it exercised this right before its maturity, would render uncertain the amount due by the makers at the maturity of the note. We must confess our inability to comprehend how a sum certain deducted from a sum certain could produce an uncertain sum. It is needless to say that it is a matter of simple arithmetical subtraction.

"It is said, further, had such an appropriation been made by the bank before its maturity, so as to entitle the maker to a credit upon the note of a partial payment, the bank was not bound to evidence such payment by indorsement upon the note, and, therefore, the bank could have negotiated the note to the plaintiff in due course of trade, for value, without notice of such partial payment before maturity. Though this would have been a palpable fraud, had the bank done so—and we may confess that it had the power to commit it—yet how does this fact affect the validity or negotiability of the note? The power was reposed by the makers, and, unless the clause itself renders the sum agreed by them in the note to be paid uncertain, certainly no misconduct or fraud of the payee after the delivery of the note, unless expressed in writing upon it, so as to carry notice to a purchaser of such misconduct or fraud, could affect his title, if he paid value for it before its maturity. The purchaser would have the right to presume, unless the sum appropriated by the bank—and it is not contended in this case that the bank made any appropriation whatever—was indorsed somewhere upon the note, that none had been made by the bank, and that the full amount of the note was owing by the makers. And this is bound to be true, upon the plainest principles that 'fraud is never presumed.' But had the plaintiff—which it was not bound to do—made the inquiry of the bank, at the time of its purchase of the note, if it had appropriated either of the makers' money to the debt evidenced by the note in suit, the only truthful information that could have been imparted, under the facts of this case, would have been that it had not done so. We will not pursue the inquiry into this phase of the case further, but will now discuss the other suggestion, Did the clause in the note render the note uncertain as to its date of payment?

"It will be observed that there was no obligation imposed upon the makers to pay before December 15, 1896, the date fixed for the maturity of the note. No action could have been maintained upon it by the payee or the holder against them until after the latter date above named. Nor had they the right to mature the note earlier than that date, nor to make partial payments upon it, nor could they have compelled the holder to accept the full payment of it before maturity. It would have required the consent of the holder for them to do any one or all of these things. The clause imposed no obligation upon the bank to apply money deposited by both or either of the makers to the satisfaction of the note *pro tanto* or in full while it was its property. It was a mere option, which it could have exercised or not, at its pleasure. Had the makers, or either of them, placed upon deposit in the bank, or otherwise in its custody or possession, the next day after the execution of the note, and permitted it to remain until its maturity, treble the sum of money which they had stipulated in the note to pay, yea, a hundred times this sum, the bank was under no legal duty to apply any portion of it. A similar provision in a note, and involving the principle here announced, was passed upon by the Supreme Court of New York in the case of Hodges v. Shuler, 22 N. Y. 114. This provision was following an unconditional promise by a railroad company to pay $1,000, with interest thereon, payable semi-annually, as per interest warrants thereto attached, as the same shall become due, in four years after date, 'or upon the surrender of this note, together with the interest warrants not due, to the treasurer, at any time until six months of its maturity, he shall issue to the holder thereof ten shares in the capital stock in said company in exchange therefor, in which case interest shall be paid to the date to which a dividend of profits shall have been previously declared, the holder not being entitled to both interest and accruing profits during the same period.' The court said: 'The instrument on which the action was brought has all the essential qualities of a negotiable promissory note. It is for the unconditional payment of a certain sum of money, at a specified time, to the payee's order. It is not an agreement in the alternative, to pay in money or railroad stock. It was not optional with the makers to pay in money or stock, and thus fulfill their

promise in either of two specified ways. In such a case the promise would have been in the alternative. The possibility seems to have been contemplated that the owner of the note might, before its maturity, surrender it in exchange for stock, thus canceling it and its money promise; but that promise was nevertheless absolute and unconditional, and was as lasting as the note itself. In no event could the holder require money and stock. It was only upon the surrender of the note that he was to recover stock, and the money payment did not mature until six months after the holder's right to exchange the note for stock had expired. We are of the opinion that the instrument wants none of the essential requisites of a negotiable promissory note. It was an absolute and unconditional engagement to pay money on a day specified, and, although an election was given to the promisees, upon a surrender of the instrument six months before its maturity, to exchange it for stock, this did not alter its character, or make the promise in the "alternative," in the sense in which that word is used respecting promises to pay. The engagement of the railroad company was to pay the sum of $1,000 in four years from date, and its promise could only be fulfilled by the payment of the money at the day named.' The courts have gone very far in sustaining the character and negotiability of promissory notes; and very properly so, when it appears from the instrument that it was the intention of the parties to execute a note, and not a mere contract for the payment of money. For apt illustrations to what length they have gone in this direction, see 1 Daniel, Neg. Inst., secs. 41, 43-45, and notes; 1 Rand. Com. Paper, secs. 110, 111, and notes; Justice McClellan's opinion in Bank v. Crenshaw, 103 Ala. 497, 15 South. Rep. 741, and authorities there cited. Our opinion is that the instrument sued upon was a commercial promissory note."

MASTER AND SERVANT — MAINTAINING MAIL CRANE TOO CLOSE TO RAILROAD TRACK.—In Louisville & N. R. R. Co. v. Milliken's Admr., 51 S. W. Rep. 796, decided by the Court of Appeals of Kentucky, it was held that a railroad company is liable for an injury to a brakeman on a freight train from coming in contact with a mail bag on a mail crane near the track, if the mail crane is erected closer to the track than is reasonably necessary to enable mails to be taken by the levers furnished by the United States government for catching the bag; but that, in an action to recover for such an injury, the court should expressly instruct the jury that the company was not liable unless the mail crane was so erected. It was further held that whether a brakeman who was thus injured was guilty of contributory negligence in sitting on top of the car, with his feet hanging over the side, was a question for the jury; there being evidence tending to show that it is customary for brakemen to occupy that position, because impracticable for them to stand all the time on long runs. The court said in part: "It is insisted that the proof does not show that his (the intestate's) feet came in contact with the mail bag as he passed the crane, or that he was knocked off in this way. It is true he might have kicked at the mail bag, and so became entangled with it, and lost his balance; but negligence is not to be presumed against him. The flying up of the arm of the crane, and the finding of his body and the mail bag so near together, make it clear to us that his striking the bag is the cause of the fall; and as, when last seen, he was in a position when this result would naturally follow, without any fresh action or impulse on his part, it seems to us the more natural conclusion that, while sitting there and unconscious of the movable arm of the crane being pulled down, he was struck by the bag and knocked off.

"It is insisted for appellant that, even if this is true, there can be no recovery; and we are referred to the case of Sisco v. Railway Co., 145 N. Y. 296, 39 N. E. Rep. 958, as sustaining this conclusion. In that case a brakeman, while going up a ladder on the side of a freight car, was struck by the stationary arm of a mail crane and knocked off, receiving injuries from which he died. The crane in that case had stationary arms, but was otherwise similar to the one before us. Both are required to be erected by the United States government so that mails can be taken by moving trains. In both the mail bag is required to hang close enough to the car that the lever or sweep attached to the car by the postal authorities may take in the bag. In that case the court, after showing that the contrivance was a useful one, which defendant had to maintain, held that there could be no recovery, because there was no proof that the crane was placed nearer the track than cranes upon other roads, or that it was practicable to place a crane at a greater distance, or to construct it with a shorter arm, and have it answer the purpose in view. Among other things, the court said: 'It was not found, nor was there any evidence upon which a jury could infer, that the crane in question could be placed any further from the track than it was and perform the function for which it was designed. The plaintiff was bound to show a state of facts indicating negligent construction or location, to raise a question for the jury upon this point. It was not sufficient for him to show an injury, or that operating the device involved danger to the brakeman. He took the risk of all the structures necessary and reasonably adapted to the business of the railroad. The burden was upon him to show that the appliance, concededly useful in the business of the defendant, was improperly constructed or located, and this he wholly failed to do. Proof that it was dangerous was not enough. He was bound to go further, and show that the defendant might, by the use of reasonable care, have accomplished its purpose, and at the same time protected its employees from the danger.'

"This seems to us to be a fair statement of the law. But in this case there was evidence that the

crane was not upright, but leaned toward the road about four inches. The swing of the arms and the hanging of the bag, always on the side next to the road, would have a tendency to pull the upright post over. This would throw the bag nearer the car, the greater the inclination became. It was also in proof that this crane was set some four and one-half inches nearer the track than other cranes from which the mail was taken. If this proof was true, this mail bag hung something like eight inches nearer the track than required by the government; and if it had hung eight inches further off, from the photographs exhibited, it would seem that the intestate would not have been knocked off. We cannot, under this evidence, say that he failed to show that the defendant might, by the use of reasonable care, have accomplished its purpose, and at the same time protected its employees from the injury. There was therefore sufficient evidence of negligence to submit the case to the jury, and the court did not err in refusing to give the peremptory instructions asked for. There was proof that the duties of the brakemen required them to be on top of the cars, and that on long runs it was impracticable for them to stand up all the time they were on top of the cars, and so it was customary for them to sit on the side of the car, as the intestate was sitting when hurt, this being as safe a place as any other for the purpose. Under the proof, the question of contributory negligence was properly left to the jury.

"Appellant asked the court to give this instruction: 'The court instructs the jury that if they believe from the evidence that the mail crane at Camden station, in the petition complained of, was not put closer to the track than necessary for the mail catcher furnished by the United States government to take the mail bag therefrom, then the mail bag being in that position was not negligence in the company, and the jury cannot find against the defendant on account of the position of the said mail crane.' This instruction was refused, and the idea was not sufficiently presented by any other instruction given, as to whether the mail bag was in fact any closer to the track than required for the catcher to take it as the mail car passed. The evidence was very conflicting on this subject. If it was not, the jury should have found for the defendant, and they may not have understood this from the other instructions. The government furnishes the lever on the side of the car. It requires the railroad to erect the cranes so that this lever will catch the mail bag. Although this may endanger the brakemen, and although it may place the crane closer to the track than really necessary, the railroad company is not responsible; for it has no power to make the levers on the car longer, or to prescribe when the mail shall be hung on the crane."

RAILROAD COMPANY — STREET RAILROAD — COLLISION WITH FIRE DEPARTMENT.—In Warren v. Mendenhall, 79 N. W. Rep. 661, decided by the Supreme Court of Minnesota, it was held that the duties of a member of a city fire department, when driving fire apparatus on a call to a fire, may require him to take risks which it would be negligence for a private person to take in pursuit of his private business; and that in an action by such a member against a street railway company for damages for an injury to him resulting from a collision at a street crossing, between a street car and a hook and ladder truck driven by him, it was held that the question of defendant's negligence and of his contributory negligence were both for the jury. The court, after a review of the evidence, says: "We are of the opinion that, under these circumstances, the question of the motorman's negligence was for the jury. We are also of the opinion that the question of whether or not plaintiff was guilty of contributory negligence was for the jury, although we regard this as rather a close question. The fact that plaintiff was driving, down a steep grade, a very heavy truck, which he was not able to control completely, has, in our opinion, no tendency to show that he was not guilty of contributory negligence, but, on the contrary, has a tendency to show that he was guilty of such negligence. As between him and defendant, it is immaterial whether he owned the truck himself or was driving it as the servant of the city. If he was driving a vehicle which was so unwieldy and unmanageable that it was dangerous to drive it on the public streets, and this was the cause of the collision, he cannot blame the defendant; but whether or not this was the cause of the collision is a question for the jury. In our opinion, the jury were warranted in finding that, even if plaintiff's truck was not unmanageable and dangerous, he would have been justified in driving as fast as he did, and attempting (until too late to avoid the collision) to pass in front of the car as he did. It is often the duty of a fireman, when attending a fire or responding to a fire alarm, to act, regardless of a considerable degree of danger to himself. To hesitate or stop at every slight indication of danger might often be a dastardly failure of duty on his part. His duties are of a public character, and in cities of a considerable size these duties are exceedingly important. On many occasions, his instant and fearless action is imperatively necessary to prevent wide-spread disaster, the loss of property, or the loss of life, or both; and, when he is called, he seldom knows the urgency of the occasion until he arrives upon the ground. Plaintiff had the right of way. An ordinance of Duluth, in force at the time, reads as follows: 'All apparatus belonging to the fire department of the city of Duluth, when attending a fire, or an alarm of fire, shall have the right of way on any and all streets, avenues, alleys or public grounds; and all persons driving vehicles of any kind, except cars upon tracks, shall turn entirely off the center of the street, and stop until such apparatus shall pass; and it shall be the duty of any conductor, driver or person in charge of any car upon

any track, upon the approach of any such apparatus, when proceeding to a fire, to immediately stop such car until such apparatus shall pass.' But, speaking for myself alone, I will say that I am of the opinion that such right of way would be implied, without the aid of any such ordinance. See State v. Sheppard, 64 Minn. 287, 67 N. W. Rep. 62.

"Of course, such a fireman must use ordinary care. Ordinary care is care commensurate with the occasion; and, when the dangers are great, it may be a very high degree of care. When a fireman's duty requires him to take great risks the rule of ordinary care may require him to be exceedingly alert and watchful to prevent injury to himself and others, but still that rule may not prohibit him from venturing into the danger. If a private citizen, pursuing his private business, had attempted to pass in front of this street car as plaintiff did, we are clearly of the opinion that it should be held, as a question of law, that he was guilty of contributory negligence, and could not recover. But the fire department is a well-known public institution. As its vehicles rush along the street, and the gongs are sounded fast and furiously, it is customary for everyone else to be alert to give these vehicles the right of way, and this custom grows out of imperative necessity. See Magee v. Railway Co., 151 Mass. 240, 23 N. E. Rep. 1102; Wilson v. Telephone Co., 41 La. Ann. 1041, 6 South. Rep. 781. See, also, as bearing on the questions here discussed, Cottrill v. Railway Co., 47 Wis. 634, 3 N. W. Rep. 376; Pennsylvania Co. v. Langendorf, 48 Ohio St. 316, 28 N. E. Rep. 172. As before stated, ordinary care may require the drivers of these vehicles, on such occasions, to be also very alert to avoid injury to themselves and others. Whether, under these rules, plaintiff was guilty of contributory negligence, is a question for the jury."

THE LIMITATIONS OF PRIVILEGE.

The law in regard to privileged communications has developed gradually. In its present stage, the press and private persons are placed upon the same footing. The privilege of embalming in printer's ink or in ordinary writing fluid, or of preserving by means of signs or pictures, the faults, foibles and moral lapses of our fellow-men as they are brought to view in proceedings in courts of justice, in legislative bodies, in the actions of public officers or of private persons, granted by the courts first to the press, in order that justice might be impartially administered, and that legislative bodies and public officers might properly discharge their duties, is now conceded to private individuals on proper occasions, when the motive is good and the end justifiable.[1] The privilege is, however, in both cases, restricted by many limitations. Absolute immunity from legal consequences for publications reflecting upon others seems, at the present time, to exist only as a doctrine between the covers of certain of the older treatises upon the law of libel. It is questionable whether it ever had a substantial existence independent of the provisoes now attached to it.[2]

The Boundaries of Privilege.—Stated with the utmost latitude, a communication tending to injure the reputation of another may be made, even volunteered, by one in the discharge of a legal or moral duty, public or private, to one interested (and by "interested," is meant interested in a business way in knowing the truth), and although the publisher himself had no interest; or it may be made to protect his own interests.[3] But in any of these cases it must be made in good faith and without malice.[4]

Publication of Court Reports.—If reports of judicial proceedings are published, such reports must be true,[5] fair,[6] that is, fairly correct,[7] and sufficiently full to enable others to form a correct opinion of the matter.[8]

Publications by One Person to Another.—If the communication is made by one person to another to protect his own interests, or in the discharge of a legal or moral duty, to one interested in learning the facts, we find the privilege of making it hedged about by additional limitations.

It Must be Warranted by the Exigencies of the Occasion.—No speaking of slanderous

[1] Bronson v. Bruce, 59 Mich. 467; Negley v. Farrow, 60 Md. 177; Campbell v. Spottiswood, 8 Law T. (N. S.) 201; 15 Nev. 195; Melissich v. Lloyd, 25 Wkly. Rep. 553.

[2] Cent. L. J., May 20, 1898, article on Absolute Privilege as a Legal Defense in Libel Suits.

[3] Toogood v. Spyring, 4 Tyrwhitt, 582-595; White v. Nicholls, 3 How. 267.

[4] Stevens v. Sampson, L. R. 5 Exch. Div. 53.

[5] Odger, Libel and Slander, 3; Hawkins v. Globe Print. Co., 10 Mo. App. 179; Abrath v. N. E. Ry. Co., 11 App. Cas. 253-4, 40 Minn. 117.

[6] Starkie, Slander & Libel, 222 272; Odger, L. & S. 250; Boogher v. Knapp, 97 Mo. 122 129; Thomas v. Crosswell, 7 Johns. Ch. (N. Y.) 262; Mitchell v. Milholland, 106 Ill. 175.

[7] MacDougall v. Knight & Son, 17 L. R. Q. B. D. 636.

[8] Odger, L. & S. 250; 4 B. & Cr. 473 478; 4 B. & Ald. 611; Delegal v. Highley, 32 E. C. L. 485; Saunders v. Mills, 6 Bing. 213; Storey v. Wallace, 60 Ill. 51; 10 Mo. App. 179; Merrill on Newspaper Libel, 182; Stanley v. Webb, 4 Sandf. (N. Y.) 21.

words can be justified which is not warranted by the occasion and the circumstances.[9] Even the fact that there was no wrong intent on the part of the publisher, makes no difference if the act is not justified by the occasion.[10] It must be made only to parties having a direct interest in the matter, and in a private and confidential manner.

(*a*) *It May be Volunteered in the Discharge of a Duty.*—The courts make a strong distinction between communications made in the line of duty and those not so made. In Stevens v. Sampson[11] the distinction was made on this ground between a newspaper reporter and an outsider sending reports to a paper, even though the reports were true. And in Flint v. Pike,[12] between a speech of counsel, presumed by the law to be acting in the discharge of his duty and in pursuance of his instructions, and held privileged for the advantage of the administration of justice, and a publication of that speech containing observations injurious to the character of a party, attorney or witness in the cause, by a third party. Such a publication was held not lawful. To the same effect are Lewis v. Walters and Lake v. King.[13]

(*b*) *It Must be Made in Good Faith.*—Good faith requires not only belief in the truth of the publication and absence of improper motives, but also lack of negligence on the part of the publisher. He must take all reasonable precautions to verify the truth of the statement and to prevent untrue and injurious publications against others.[14]

(*c*) *It Must be Made to One Having a Direct Interest.*[15]—In Elam v. Badger,[16] the statements were made of an applicant for the position of teacher in the public schools, by a resident of the district and patron of the schools, to the treasurer of the schools, but who had no authority to employ teachers, nor even to vote, and to other men who had no official position in the school district. In Sunderlin v. Bradstreet and Taylor v. Church,[17] the reports were sent out by a mercantile agency to subscribers who were not interested in the standing of the firm, as well as to those who were. It was held in both cases that the communications were not privileged.

(*d*) *The Communication Must be Made in a Private and Confidential Manner.*[18]—As was said by Mr. Justice Nelson in Sunderlin v. Bradstreet Co.: "The principle upon which privileged communications rest imports confidence and secrecy between individuals, and is incompatible with the idea of a communication made by a society or congregation of persons, or by a private company or corporate body." One of the proofs of malice, it is laid down in Townshend on Slander and Libel,[19] is bad motive, and one proof of bad motive is unnecessary publicity in the publication.[20]

Mercantile Agency Reports.—It is on this ground that the reports of mercantile agencies have been held to lose their privilege when communicated indiscriminately to subscribers, the disinterested, as well as the interested, in semi-annual books or weekly sheets;[21] or when delivered over the counters of the agency by the agency's clerks, or to the subscribers or their clerks,[22] and this while courts concede mercantile agencies to be valuable institutions and of the greatest service to business men.[23]

Duns on Postal Cards or by Telegraph.—It is on this ground that courts have condemned the practice of sending duns on postal cards,[24] and of sending defamatory matter generally by telegraph or by postal card. Odgers says of this matter: "Defamatory remarks, if written at all, should be sent in a private letter, properly sealed and fastened up, not written on a postal card, or sent by telegraph,

[9] Elam v. Badger, 23 Ill. 498, 46 N. Y. 188; Briggs v. Garrett, 111 Pa. St. 404; Press Co. v. Stewart, 119 Pa. St. 584; Gassett v. Gilbert, 6 Gray (Mass.), 94; L. R. 5 Exch. D. 53.

[10] Starkie, Slander, 210; 13 Ill. 275.

[11] Stevens v. Sampson, L. R. 5 Exch. D. 53.

[12] Flint v. Pike, 4 B. & Cr. 478.

[13] Lewis v. Walters, 4 B. & A. 612; 1 Saunders, 132.

[14] Allen v. Pioneer Pr. Co., 40 Minn. 117.

[15] 23 Ill. 498; 46 N. Y. 188; 8 N. Y. 452; 5 Blatchf. 497; 77 Ga. 172; Seward v. Catlin, 3 Wend. 292; 3 C. & P. 160; Townshend, S. & L. § 243, and many cases cited.

[16] Elam v. Badger, 23 Ill. 498.

[17] Sunderlin v. Bradstreet Co., 46 N. Y. 188; Taylor v. Church, 8 N. Y. 452.

[18] Gilmer v. Eubanks, 13 Ill. 27; 46 N. Y. 188; Williamson v. Freer, L. R. 9 C. P. 393; L. R. Ir. Q. B. C. P. & Exch. D. 391; Odger, L. & S. 281.

[19] § 246.

[20] Odger, 281; 6 Gray (Mass.), 94; Brow v. Hathaway, 13 Allen (Mass.), 242.

[21] 46 N. Y. 188; 8 N. Y. 452; 8 Phila. Rep. 617.

[22] Beardsley v. Tappan, 5 Blatchf. (U. S. C. C. Rep.) 497; Johnson v. Br. Co., 77 Ga. 172.

[23] Trussell v. Scarlett, 18 Fed. Rep. 220; Com. v. Stacey, 8 Phila. Rep. 617.

[24] Robinson v. Jones, L. R. Ir. Q. B. C. P. & Exch. D. 391.

for two strangers, at least, read every telegram, many more, most postal cards."[25] "Circumstances," said the court in Robinson v. Jones,[26] "may make a telegram privileged, but nothing can excuse a postal card."

Publication of Speeches.—In Lake v. Lake,[27] it was held that the printing and distribution by a member of parliament of his speech in parliament would not be privileged, and that, in printing them, he would libel the party to the printers and compositors.

Circulars and Hand-bills.—The attitude of the courts toward circulars and hand-bills is much the same as toward postal cards and telegrams containing defamatory matter; and in Commonwealth v. Blanding[28] we find a severe animadversion upon this class of publications. "No state of society," said the learned judge, "would be more deplorable than that which would admit an indiscriminate right in every citizen to arraign the conduct of others before the public in newspapers, hand-bills or other modes of publication, even admitting all the allegations to be true." In Getting v. Foss,[29] a circular sent by the secretary of a society, whose sole object was the protection of trade against swindlers and sharpers, to members of that society, and containing matters reflecting upon the reputation for honesty of the plaintiffs, was held not privileged. The point made in all these cases is the publication to those who had no direct interest in knowing the defamatory matter.

Unnecessary Publicity of Publication Forfeits Privilege.—Though the words themselves would be privileged if addressed only to a few individuals concerned, yet the privilege may be lost if the defendant deliberately chooses to publish them to the general public, or to any one who has not a corresponding interest in the information.[30] A communication that would be privileged if made to A only, forfeits privilege if made to A through the postal telegraph of postal card, because communicated through unprivileged persons.[31] In Phila. R. R. Co. v. Quigley,[32] it was held that the report of officers of a corporation to the stockholders of the result of their investigation into the conduct of their officers and agents, with their conclusions on the evidence collected by them, is privileged, but a preservation of the report in book form for distribution among the stockholders and in the community was not privileged. And Brown v. Croome,[33] where the defendant published an advertisement calling a meeting of the creditors of the plaintiff, and, in addition, defamatory remarks concerning the plaintiff, the publication was held not privileged, because the meeting might have been called in a less public manner. In Dale v. Harris,[34] it was said: "Plaintiff has a right, notwithstanding the privileged character of the communication, to go to the jury if there be evidence tending to show actual malice, as when the occasion of the utterance of the words is such as to indicate, by its unnecessary publicity, or otherwise, a purpose wrongfully to defame the plaintiff. These are elementary principles."

The Communication Must be Made Without Malice.—Malice is the gist, that is the main point, whereon rests an action for libel or slander.[35] Malice in fact is ill-will, intent to injure. Malice in law is a wrongful act, intentionally done, without lawful justification or excuse.[36]

A communication or publication otherwise privileged loses that privilege if made maliciously, whether it be the utterance of the judge upon the bench, of counsel, witnesses, jurors or parties to the cause, or of private individuals, made in the apparent discharge of some duty, legal, moral or social, or to protect their own rights and interests.[37] If malice exists, the truth of the publication alone will not save it from the charge of being libelous. The motive must be good and the end justifiable.[38] The only difference

[25] Odger, L. & S. 281.
[26] L. R. Ir. Q. B. C. P. & Exch. D. 391.
[27] Lake v. King, 1 Saunders, 132.
[28] Com. v. Blanding, 3 Pick. (Mass.) 312.
[29] Getting v. Foss, 3 Car. & Payne, 160.
[30] Odger, L. & S. 281.
[31] Williamson v. Freer, L. R. 9 C. P. 393.
[32] 21 How. (U. S.) 202.
[33] 22 Starkie's Cases, 297.
[34] 109 Mass. 193.
[35] Flood on L. & S. 36; Rearick v. Wilcox, 81 Ill. 77; McKee v. Ingalls, 4 Scammon, 32, and cases cited; 40 Minn. 117; Wason v. Walter, 4 L. R. Q. B. 87.
[36] Gilmer v. Eubanks, 13 Ill. 271.
[37] Whitney v. Allen, 62 Ill. 472; 13 Ill. 171; 3 How. 267; Baxter v. Saunders, 6 Heisk. (Tenn.) 383; 4 B. & Cr. 473; 109 Mass. 193; 4 Tyrwhitt, 582; Locke v. Br. Co., 22 Fed. Rep. 771; Wright v. Woodgate, 2 Cr. M. & R. 573.
[38] Stevens v. Sampson, L. R. 5 Exch. D. 53.

there is between a privileged and unprivileged publication, in regard to malice, lies in the proof. If the form and the occasion of the publication afford a *prima facie* legal excuse, the *onus* of proving malice lies on the plaintiff.[39] If the publication is libelous *per se*, the law implies malice. It is unnecessary for the plaintiff, to entitle him to recover, to introduce any evidence from which malice may be inferred other than the libelous article.[40]

Proof of Malice.—Where the communication is privileged, the plaintiff may show malice by:

1. The construction of the spoken or written matter.

2. By facts and circumstances connected with that matter, or with the situation of the parties, adequate to authorize the conclusion.[41]

Malice, or a want of good faith, is established when it is shown either:

1. That the matter was false within the knowledge of the publisher.

2. Or bad motive in making the publication, as unnecessary publicity or ill-will, *i. e.*, intent to injure.

3. Or that it contained matter not relevant to the occasion.[42]

While the freedom of the public press and of private pens has been gradually enlarged, a careful examination of the entire matter shows that the disposition of the courts in the growing body of legal decisions is to afford increasing protection to private character. It was once said by Lord Hardwicke:[43] "The crime in a libel does not arise merely from the scandal, but from the tendency which it has to occasion a breach of the peace by making the scandal more public and lasting and spreading it abroad." The law looks to the general tendency of the act and because of its mischievous nature, considers that as evidence of a general mischievous intent. It entirely overlooks the particular tendency of the act, which may have been innocent.[44] The malice it implies is not actual ill-will or a definite design in the wrongdoer's mind to carry out a wrongful purpose.[45] It is that sort of general violation of the right consideration due to all mankind, which may not be personally directed against anyone.[46] It is the manifestation of a general wickedness of intent by the willful infliction, whether carelessly or designedly, of a wrong on others, which is not warranted by law.[47]

The law does not consider that either the welfare or convenience of society will be in anywise promoted by an indiscriminate impeachment of the honesty, integrity, virtue or reputation of our fellow-men, or by exposure of their natural defects, the effect of such impeachment or exposure being, inevitably, to hold them up to public hatred, contempt or ridicule, or to work them financial injury.

FLORA V. WOODWARD TIBBITS.

Chicago, Ill.

[39] Odger, 269; Townshend, § 245.
[40] Thompson v. Powning, 15 Nev. 195.
[41] White v. Nicholls, 3 How. (U. S.) 267.
[42] Townshend, S. & L. § 245.
[43] Bradley v. Methwyn, Selwyn's N. P. B. R. M. 10 G. H. MSS.; King v. Griffin, Hil. 7 G. 2.
[44] Cooper on Libel, 94.
[45] 15 Pick. (Mass.) 340; 15 Nev. 195.
[46] Flood, L. & S. 31; Sherwin v. Swindall, 12 M. & W. 783; Clark v. Molyneux, L. R. 3 Q. B. D. 237.
[47] 15 Nev. 195; Flood, L. & S. 32.

LIFE INSURANCE—SUICIDE.

HART v. MODERN WOODMEN OF AMERICA.

Supreme Court of Kansas, July 8, 1899.

It is competent for parties, in contracting as to life insurance, to provide that self-destruction by the insured, whether sane or insane, shall avoid the contract. Such a provision covers a case of intentional self-destruction by one who understood the physical nature and consequences of the act which caused his death, although his mind was so far impaired that he was not conscious of the moral quality or consequences of such act.

JOHNSON, J.: On June 1, 1896, Ozro E. Hart applied for membership and insurance in the Modern Woodmen of America, and on June 5, 1896, a beneficiary certificate was issued to him, providing that, while in good standing, he was entitled to participate in the benefit fund in an amount to not exceed $3,000, which was to be paid at his death to his mother, Ruth America Hart. On June 13, 1896, Ozro E. Hart also obtained a beneficiary certificate in the order of the Knights of the Maccabees, in the sum of $3,000, payable at his death to Everett L. Hart, his son. In the case of the Modern Woodmen of America it was expressly provided that the certificate should be void, and all benefits which might have accrued absolutely forfeited, if the insured should "die by his own hand, whether sane or insane." In the application Hart was asked if he understood that

the order did not indemnify against death by suicide, to which he made an affirmative answer, and it was provided that the statement should constitute a part of the insurance contract. In the case of the Knights of the Maccabees the certificate provides that, when the applicant becomes a member of the order, he is entitled to the rights and benefits of the same, subject to the provisions of the laws of the order. The laws of the order expressly provide that no benefit shall be paid on account of the death of a member when death is "the result of suicide within one year after admission, whether the member so taking his own life was sane or insane at the time." On the certificate itself is printed this provision of the law, exempting the order from liability if the member commit suicide within one year after admission to the order, whether sane or insane. The application of Hart also contains the declaration: "I also agree that, should I commit suicide within one year from the date of my admission into the order, whether sane or insane at the time, this contract shall be null and void." And he further stipulated that the application and laws of the order should constitute a part of the certificate. Within a few days after his admission into the orders, and the taking out of the beneficiary certificates, Ozro E. Hart committed suicide, and the facts with reference to the suicide were agreed upon between the parties, and are as follows: "That the said Ozro E. Hart was married on the 4th day of July, 1889, and lived and cohabited with his wife until the time of his death; that his wife was the mother of said Everett L. Hart, and he the father of said child; that on the night of the 19th or 20th day of June, 1896, the said Ozro E. Hart first learned and discovered that his wife and one Pitt were occupying the same bed, and illicitly cohabiting together, and that his said wife was guilty of adultery with the said Pitt; and that the said knowledge and information of the infidelity of his wife affected the mind of said Hart to such an extent and in such a manner that his reasoning faculties became so impaired that he (the said Ozro E. Hart) became unable to understand the moral character of his acts, and became insane, and while in such condition of mind, and while being so insane, he shot and killed his said wife, then turned the pistol on himself, and shot and killed himself, in the city of Wichita, Sedgwick county, Kan., on June 21, 1896." In the trials the principal controversy was whether the self-destruction of Hart exempted the orders from liability, and the decision in each case was in favor of the defendants.

While there is some contention to the contrary, it is clear that an exception as to non-liability because of death by suicide, whether sane or insane, is a part of each of the insurance contracts under consideration. In one case it is plainly written on the face of the certificate, and in the other it is clearly provided for in the application and by-laws, which are imported into and made a part of the certificate, which together show the contract of the parties, and that the exception is included. Much diversity of judicial opinion has arisen as to the effect of the suicide of the insured. The Supreme Court of the United States has distinctly held that intentional self-destruction by the insured, while sane, is not a risk covered by a life insurance policy, even when the policy contains no exceptions as to such a death, and it was there said that such a risk could not be legally covered by an insurance contract, as it would be against public policy to make such a contract. Ritter v. Insurance Co., 169 U. S. 139, 18 Sup. Ct. Rep. 300. See, also, Supreme Commandery v. Ainsworth, 71 Ala. 436; Hartman v. Insurance Co., 21 Pa. St. 466. Other authorities hold that, where life insurance is effected for the benefit of wife or children, the suicide of the insured, while sane, is not a defense, in the absence of a condition or exception to that effect in the policy. Fitch v. Insurance Co., 59 N. Y. 557; Darrow v. Society, 116 N. Y. 537, 22 N. E. Rep. 1093; Mills v. Rebstock, 29 Minn. 380, 13 N. W. Rep. 162. The Supreme Court of Wisconsin has held that intentional suicide, while sane, does not avoid a life insurance policy, in the absence of any provision therein to that effect, if third persons are beneficiaries. Patterson v. Insurance Co., 100 Wis. 118, 75 N. W. Rep. 980. There is much conflict in the authorities where the insurance contract merely excepts death by suicide or self-inflicted injuries, the result of varying standards in measuring the mental capacity and responsibility of the insured. With respect to this provision Justice Gray, of the Supreme Court of the United States, remarked that "the decisions upon the effect of a policy of life insurance which provides that it shall be void if the assured 'shall die by suicide,' or 'shall die by his own hand,' go far towards determining this question. This court, upon full consideration of the conflicting authorities upon that subject, has repeatedly and uniformly held that such a provision, not containing the words 'sane or insane,' does not include a self-killing by an insane person, whether his unsoundness of mind is such as to prevent him, from understanding the physical nature and consequences of his act, or such as to prevent him, while foreseeing and premeditating its physical consequences, from understanding its moral nature and aspect." Insurance Co. v. Crandal, 120 U. S. 527, 7 Sup. Ct. Rep. 685.

To avoid disputes as to the meaning of "suicide," and to definitely fix the extent of the risk, it is not uncommon to incorporate a condition in an insurance contract that it shall be void if the insured shall die by suicide, sane or insane. No reason is seen why a stipulation exempting the insurer from liability for acts of the insured committed while insane should not be enforced. It does not contravene sound morals or public policy, and courts must enforce the intention of the parties as expressed by it. As to the right of insurance companies to include such an exemption in the policy, it has been said that if

"they are at liberty to stipulate against hazardous occupations, unhealthy climates, or death by the hands of the law, or in consequence of injuries received when intoxicated, surely it is competent for them to stipulate against intentional self-destruction, whether it be the voluntary act of an accountable moral act or not." As to the effect of the words "sane or insane," added to the condition, the same authority says: "Nothing can be clearer than that the words 'sane or insane' were introduced for the purpose of excepting from the operation of the policy any intended self-destruction, whether the insured was of sound mind or in a state of insanity. These words have a precise, definite, well-understood meaning. No one can be misled by them, nor could an expansion of this language more clearly express the intention of the parties. In the popular, as well as the legal, sense, 'suicide' means, as we have seen, the death of a party by his own voluntary act; and this condition, based, as it is, on the construction of this language, informed the holder of the policy that, if he purposely destroyed his own life, the company would be relieved from liability." Bigelow v. Insurance Co., 93 U. S. 284. Such a condition does not admit of an interpretation to include death by accident, or by mistake, although it may have resulted from the immediate act of the assured; but, under an exception such as we are considering, if the insured purposely takes his own life, the insurer goes free. Pierce v. Insurance Co., 34 Wis. 289; De Gogorza v. Insurance Co., 65 N. Y. 241; Scarth v. Society, 75 Iowa, 346, 39 N. W. Rep. 658; Billings v. Insurance Co., 64 Vt. 78, 24 Atl. Rep. 656; Streeter v. Society, 65 Mich. 199, 31 N. W. Rep. 779; Salentine v. Insurance Co., 24 Fed. Rep. 161; Insurance Co. v. Hollowell (Ind. App.), 43 N. E. Rep. 278; Riley v. Insurance Co., 25 Fed. Rep. 316; Insurance Co. v. McConkey, 127 U. S. 661, 8 Sup. Ct. Rep. 1360; Sabin v. National Union, 90 Mich. 177, 51 N. W. Rep. 202.

In interpreting such an exception, a distinction has been made by some of the authorities between cases of insanity where the suicide was conscious of the physical nature and result of the act which caused his death, and cases where he did not appreciate the physical consequences of such act. If there be ground for such a distinction, there is no room for it in the cases under consideration. The agreed facts show a case of intentional self-destruction, and that, while he did not understand the moral character of his acts, he had sufficient intelligence as to what the physical end and consequences of the same would be. We are not required to determine the effect of such an exception where the insured was so wholly bereft of reason that he did not understand the natural result of his acts, nor what would be the effect if, in addition to this exception, the contract contained a clause making it incontestable after a stated time, and the death had occurred after that time. From the language of the contracts and the agreed facts as to the manner of Hart's death, it is clear that the risk was not within the contemplation of the contracting parties. The judgments of the district court will therefore be affirmed.

NOTE.—*Recent Cases on Effect of Suicide on Policies of Life Insurance.*—Rev. St. Mo. 1889, sec. 5855, provides that in all suits on life insurance policies it shall be no defense that the insured committed suicide unless it be shown "that the insured contemplated suicide at the time he made his application for the policy." Held, that it was not sufficient for a defendant company to show that the insured, at the time of his application had merely considered the subject of suicide, without a definite purpose to commit the crime. Ætna Life Ins. Co. v. Florida, 69 Fed. Rep. 932, 16 C. C. A. 618. The personal representative of one who, when sane, deliberately kills himself, with the intent to secure to his estate the amount of insurance he has effected upon his life, cannot recover the insurance money, though the policy contains no provisions respecting suicide. Ritter v. Mutual Life Ins. Co. of New York (C. C. A.), 70 Fed. Rep. 954, 17 C. C. A. 537. A warranty in the application that the insured will not die by his own hand has the same effect as a condition in the policy that the same shall be void if the insured shall die by his own hand. Mutual Life Ins. Co. v. Leubrie (C. C. A.), 71 Fed. Rep. 843, 18 C. C. A. 332. In an action upon a policy of life insurance, the presumption is that the insured did not kill himself. Connecticut Mut. Life Ins. Co. v. McWhirter, 19 C. C. A. 519, 73 Fed. Rep. 444. It is an implied condition in a contract of life insurance that the insured will not intentionally terminate his own life. Ritter v. Mutual Life Ins. Co. of New York (C. C. A.), 69 Fed. Rep. 505. Where a policy of life insurance provides that policies shall be void if the insured should die by his own act, whether sane or insane, there can be no recovery for the death of the insured, resulting from his own voluntary, intentional act. Weld v. Mutual Life Ins. Co., 61 Ill. App. 187. In an action on a life policy making "self-destruction by the insured, whether sane or insane," an avoidance of the policy, it was error to instruct that death from poison self-administered would not avoid the policy, unless it was shown that it was "willfully and deliberately" taken by the insured, with intent to commit suicide; and such error was not cured by a subsequent instruction directing a verdict for defendant if "deceased came to his death by poison taken with intent to commit suicide." Union Cent. Life Ins. Co. v. Hollowell (Ind. App.), 43 N. E. Rep. 277. In an action on a policy of the life of R who had committed suicide, the court instructed the jury that if R killed himself while his reasoning faculties were so far impaired by insanity that he was unable to understand the moral character of his act, even if he did understand its physical nature and effect, such self-destruction would not prevent recovery on the policies, and explained the expression "moral character of his act" by adding that if R understood, as a sane man would, the consequences to follow from his suicide to himself, his character, his family, and others, and was able to comprehend its wrongfulness, then he was to be regarded as sane, and charged that, if R was sane when he committed suicide, such suicide was a defense to the policy. Held no error. Ritter v. Mutual Life Ins. Co. of New York, 17 C. C. A. 537, 70 Fed. Rep. 954. Suicide of the insured is not a breach of a warranty in his application that he will not "die by his own hand," if, at the time of taking his life, his

reasoning faculties are so far impaired that he is not able to understand the moral character, general nature, consequences, and effect of his act, or when he is impelled thereto by an insane impulse which he has not the power to resist. Mutual Life Ins. Co. v. Leubrie (C. C. A.), 71 Fed. Rep. 843, 18 C. C. A. 332. Where one whose life is insured kills himself when his reasoning faculties are so far impaired by insanity that he is unable to understand the moral character of his act, his self-destruction will not, of itself, prevent a recovery on the policy, though he understand the physical nature and consequences of his act. Ritter v. Mutual Life Ins. Co. of New York (C. C. A.), 69 Fed. Rep. 505. A life insurance company may lawfully stipulate against liability for the death of insured by his own hand, whether sane or insane. Mutual Reserve Fund Life Assn. v. Payne (Tex. Civ. App.), 32 S. W. Rep. 1063. A warranty that insured will not die by his own act, "whether sane or insane," is valid. Kelley v. Mutual Life Ins. Co. (C. C.), 75 Fed. Rep. 637. Rev. St. ch. 89, art. 3, sec. 5869, provides that associations doing a life or casualty insurance business on the assessment plan shall not be subjected to any other provisions of the general insurance laws except as set forth in such article. Held that such companies are not governed by Rev. St. 1889, sec. 5855, providing that in suits on policies of life insurance it shall be no defense that the insured committed suicide, unless he contemplated suicide at the time he made his application, any stipulation in the policy to the contrary notwithstanding; such section not being incorporated in said article 3. Haynie v. Knights Templars' & Masons' Life Indemnity Co. (Mo.), 41 S. W. Rep. 461. Under a provision in an assessment policy that "in case of my suicide or self-destruction, sane or insane, voluntary or involuntary, the amount" to be paid shall only be the money paid as assessments, the insured having committed suicide when insane to such an extent as to be unable to form an intent to take his own life, the beneficiaries cannot recover the amount of the policy. Haynie v. Knights Templars' & Masons' Life Indemnity Co. (Mo.), 14 S. W. Rep. 461. The word "insane" implies every degree of unsoundness of mind, and the liability of the insurer is not affected by the degree of insanity. Spruill v. Northwestern Mut. Life Ins. Co. (N. Car.), 120 N. Car. 141, 27 S. E. Rep. 39. Where a life policy provides that if, within two years from the date thereof, "the said assured shall, whether sane or insane, die by his own hand, then this policy shall be null and void," the insurer is protected from all liability if, within the two years, suicide shall be committed by the assured, whether sane or insane. Spruill v. Northwestern Mut. Life Ins. Co. (N. Car.), 120 N. Car. 141, 27 S. E. Rep. 39. P was insured in the defendant company, under a policy providing that if he died by his own hand within three years, whether sane or insane, the policy should be void. He died within three years as a result of cutting his throat with a table knife while in a delirium induced by erysipelas, but before death recovered consciousness and stated that he did not know what he had done, and did not want to die. Held, that although decedent did not appreciate the moral character of his act, he was still conscious of its physical nature, and intended by it to cause his death, and the policy was avoided by his act. Pagenhardt v. Metropolitan Ins. Co. (Com. Pl.), 6 Ohio Dec. 190, 4 Ohio N. P. 169. Provision in a life policy for non-liability of insured committing suicide, even when insane, is invalid. Tritschler v. Keystone Mut. Ben. Assn., 180 Pa. St. 205, 36 Atl. Rep. 734. The Supreme Lodge, Knights of Pythias, originally purely a fraternal benevolent association, which by amendment of its charter was authorized to establish an endowment rank, and to issue certificates of membership therein providing for payment of a certain amount at death, the member to make fixed monthly payments, is, as to such a member, on such a certificate, an old-line insurance company, and, therefore, subject to Rev. St. 1889, sec. 5855, allowing such a company the defense of suicide only where suicide was contemplated at the time of application for policy. Toomey v. Supreme Lodge, Knights of Pythias, 48 S. W. Rep. 936. Where a policy provides that death, as the result of self-destruction, within two years from the date thereof, whether sane or insane, is not a risk assumed by the company under the contract, and the insured commits suicide within two years from the date of the policy, there can be no recovery. Sargent v. National Life Ins. Co., 41 Atl. Rep. 351. In an action on a life insurance policy, providing that if the insured, within two years from the date of the policy, "shall commit suicide, while sane or insane, the policy shall become void," it appeared that the insured, within the time limited, while possibly insane, took a glass dish, and with sharp edges cut his arm, severing an artery, and cut a gash in the left breast, and then cut his throat, causing his death. The proof of loss stated that the cause of death was suicide. There was no evidence that the wounds were inflicted involuntarily, and not for the purpose of self-destruction, or that insured was at the time unconscious. Held, that an instruction to find for defendant was not error. Parish v. Mutual Benefit Life Ins. Co., 49 S. W. Rep. 153. A stipulation in an insurance certificate that the suicide of the insured, whether sane or insane, should cancel his certificate, means insane in any degree. Brower v. Supreme Lodge Nat. Reserve Assn., 74 Mo. App. 490. A policy obtained by one on his own life, payable to himself, his executors, administrators, or assigns, which is silent on the subject of suicide, becomes void if the insured commits suicide when sane. This results both from the presumed intention of the parties, and from principles of public policy. Ritter v. Mutual Life Ins. Co., 169 U. S. 139, 16 S. C. Rep. 300. Rev. St. Mo. 1889, sec. 5855, which provides that in suits "upon policies of life insurance," suicide shall be no defense, although the policy may contain stipulation to the contrary, does not apply to accident policies, although Rev. St. Mo. 1889, sec. 5811, authorizes life insurance companies to engage in the business of accident insurance, declaring, however, that "such accident insurance shall be made a separate department of the business of a life insurance company undertaking it." Ticktin v. Fidelity & Casualty Co., 87 Fed. Rep. 543. A condition in the by-laws of a mutual benefit association that no benefit shall be paid on the death of a member in event that he shall commit suicide, whether sane or insane, within two years of his admission to membership, is a valid one, and binding upon his beneficiaries. National Union v. Thomas, 10 App. D. C. 277. Where a policy of life insurance provides that it shall be void if the assured commit suicide, the proviso attaches if the assured, being in the possession of his ordinary reasoning faculties, from anger, pride, jealousy, or a desire to escape from the ills of life, intentionally takes his own life. Grand Lodge of Illinois, Independent Order of Mutual Aid v. Wieting, 168 Ill. 408, 48 N. E. Rep. 59. Where a policy of life insurance contains no provision making suicide or self destruction by the assured a forfeiture of the policy, intentional self-destruction while sane will

avoid the policy only where such a policy is by its terms payable to the assured or his personal representative. Supreme Lodge Knights of Pythias of the World v. Kutscher, 72 Ill. App. 462.1 When the policy or the constitution and by-laws of an insurance company contain no provisions qualifying the right to recover if the assured takes his own life, suicide, in the absence of fraud or collusion, is not a defense. Supreme Lodge Knights of Pythias v. Trebbe, 74 Ill. App. 545. Where a life insurance policy contains no stipulation as to suicide, and is taken out in good faith, it is not avoided, as against a beneficiary named therein, by the fact that assured, while sane, purposely took his own life. Sailer v. Economic Life Assn. of Clinton, 74 N. W. Rep. 941. Deceased, insolvent, was heavily insured. It did not appear that he was subject to fits. He invited a friend to go boat riding, promising a pleasant time. The friend declining, he went alone. He was seen rowing in a circle after his hat, and, in reaching for it, fell out. He called for help several times, threw up his hands, and was swimming rapidly to catch the boat. When overtaken he was floating dead on the water, face down. Experts testified that, if he were swimming, death was probably due to drowning, and as the abdomen was distended with gases which might be due to indigestion, that would account for the body not sinking. Held, that the question of suicide was for the jury. Burnham v. Interstate Casualty Co. of New York, 75 N. W. Rep. 445. Where death may be attributable to suicide, accident or sickness, the presumption of law is against suicide. Burnham v. Interstate Casualty Co. of New York, 75 N. W. Rep. 445. Where a life policy is silent as to suicide, it will not for such act be avoided as against the wife of insured, who is the nominated beneficiary. Morris v. State Mut. Life Assur. Co., 183 Pa. St. 563, 39 Atl. Rep. 52, 41 W. N. C. 353. A life insurance policy payable to third persons as beneficiaries contained an absolute, incontestable clause, except for non-payment of premiums, etc. It also contained a clause that death in consequence of, or in, violation of law by the insured was a risk not assumed. Held, that the death of the insured by suicide did not, under the last clause, avoid the policy in the absence of a special provision so providing. Patterson v. Natural Premium Mut. Life Ins. Co., 75 N. W. Rep. 980. Suicide while sane is no defense to an action on a policy of insurance payable to third persons as beneficiaries, where there is no stipulation to that effect in the policy. Patterson v. Natural Premium Mut. Life Ins. Co., 75 N. W. Rep. 980. A person is sane at the time of taking his life when he is able to comprehend the wrongfulness of his act, and to realize its full consequence to himself, his character, the members of his family and others, as fully as would a man of sound mind. Ritter v. Mutual Life Ins. Co., 169 U. S. 139, 18 S. C. Rep. 300. The proviso in a policy that it shall be void if the assured commit suicide does not attach, though he intentionally take his own life, if his reasoning faculties are so far impaired that he is not able to understand the moral character, the general nature, consequences and effect of the act, or is impelled thereto by an insane impulse, which he cannot resist. Grand Lodge of Illinois, Independent Order of Mutual Aid v. Wieting, 168 Ill. 408, 48 N. E. Rep. 59. When one kills himself while insane, even though he intends that the result of the act shall be fatal, but through the impairment of the reasoning faculties is not able to understand the moral character, nature, consequences and effect of such act, or is impelled by an irresistible impulse which he cannot withstand, it is not suicide, within the contemplation of the parties to a contract of life insurance, and the insurer is liable. Grand Lodge I. O. M. A. v. Wieting, 68 Ill. App. 125. In a suit on an insurance policy containing "the sane or insane clause" in reference to death by suicide, it is not necessary, to relieve the insurer from liability, that a person taking his own life was conscious of the moral quality or consequence of the act, but only that he knew that the means employed would cause death or endanger his life. Nelson v. Equitable Life Assur. Soc., 73 Ill. App. 133.

JETSAM AND FLOTSAM.

LYNCHING—HOW FAR THE COURTS ARE RESPONSIBLE FOR ITS PREVALENCE.

Two of the justices of the Supreme Court of North Carolina expressed their opinions very decidedly in the homicide case of The State v. Rhyne, 33 S. E. Rep. 128, as to whether the number of lynchings in that State was due in part to the action of the courts. Judge Douglas, who concurred with the majority of the court in granting a new trial to the defendant, answered in a short opinion the statement which had evidently been made in the discussion among the judges, that the appellate courts were so lenient with murderers that lynchings were resorted to in order to protect society. Judge Douglas said: "I am unwilling to rest under the charge that the increase of lynching is caused by the inability of the court to protect society from murderers. In the first place, I do not think there has been any increase of lynching in this State, where it has always been extremely rare; and even if our courts were inefficient, which I emphatically deny, I do not see how our alleged laxity should increase lynchings in other States without having any such effect in our own. Such suggestions do great injustice to our State, and may do great harm by encouraging the very outrages they profess to denounce. In any event they tend to weaken—especially when coming from such a source—the respect of the people for the administration of justice, which is the foundation of social order. I feel safe in saying that the courts of this State are fully competent to protect our citizens, and able to do so without denying to any one equal protection of the law. The temple of justice contains no alter of sacrifice nor do the people of North Carolina demand a scapegoat for the sins of the 10,000 murderers throughout the country. We are told that wealthy men who have money enough to retain able counsel are rarely convicted of murder. Are they ever lynched? If they are never lynched, then lynch law can in no sense be regarded as a protest against their acquittal. It is always a matter of deep regret that a judge should ever feel it his duty to go outside the record in defending the opinion of the court; but when his action is questioned in a manner that he cannot ignore, his silence may be construed into an apparent acquiescence that may tend to bring into disrepute the tribunals of justice and the laws of the land. Feeling as I do, more I do not wish to say, less I could not say."

Judge Clark, dissenting from the opinion of the majority, wrote an opinion in which he endeavored to show that the conviction of the defendant was proper. He then refers to the lynching matter as follows: "From the report of the attorney-general to congress, it appears that in the last dozen years the

number of homicides in the United States has suddenly risen from 4,000 to 10,500 per annum, and that for the vast slaughter represented by the last figure, in round numbers, 100 were convicted of murder by the courts and 240 were executed by lynch law—that growing blot upon our civilization. In this State, from the official 'criminal statistics,' on an average there are 125 homicides per annum, for which on an average two are executed by law and four are lynched, though all the lynchings doubtless are not reported. In 1894 the attorney-general's report showed eight lynched and two legal executions; and the next year two were lynched and no execution by law. Lynch law, evil that it is, is a protest of society against the utter inefficiency of the courts, as above shown, to protect the public against murder. It is an evidence that society, under that first of laws, the right of self-preservation, is endeavoring to protect itself when the costly machinery of courts has failed in the object of its creation, so far as homicide is concerned. The wisest course is not to suppress the facts, but to prove the evil and remove the cause. The inefficiency of the courts is chiefly due to a failure to adapt legislation as to murder trials to their changed surroundings in other respects."

Judge Clark pointed out that in North Carolina the State is only allowed four peremptory challenges while the prisoner has twenty-three. The prisoner can except to any ruling or charge of the court, but the solicitor for the State cannot. "The practical effect of our present system," says Judge Clark, "is that a murder, however flagrant, if the prisoner or his friends have money, entails merely a sharp fine upon the slayer, imposed for the benefit of some influential and able lawyer, in the way of a fee. It is merely this and nothing more. The heavy expense of the trial all falls upon the defenseless public, with the increased insecurity of human life resulting from easy acquittals. An ideal trial is one in which the innocent has nothing to fear, and the guilty but little to hope. In our murder trials, happily we fulfill the first condition, but are exceedingly far from the latter. It is true that this disparity of challenges, and other discrimination which prevent the State having a fair showing, can only be corrected by legislation; and many States are doing it. But the courts, knowing the overwhelming disadvantages under which the State already labors in attempting to protect society against murderers and the increase of lynchings caused by the inability of the courts to do this, should be slow to increase the inefficiency of the court, with the increase of the evil sure to result therefrom, by taking a case from the jury, who, upon the evidence, and upon a charge in accordance even with State v. Fuller, have found that, beyond any reasonable doubt in the mind of any juror, the prisoner slew the deceased, with premeditation and malice aforethought." —*American Law Review.*

HUMORS OF THE LAW.

The late Lord Cairns, when lord chancellor, was, of course, an *ex officio* visitor of lunatic asylums. An old "story" says he went down one Wednesday, when the peers do not sit, to Hanwell, knocked at the door and asked to be admitted.

"Can't let you in," said the janitor; "days for visitors Tuesdays and Fridays."

"But I have a right to go inside," said his lordship; "I insist on doing so."

"Read the regulations," and the janitor pointed to them.

"Do you know who I am?" asked Lord Cairns.

"Don't know and don't care," said the menial.

"I am entitled to admission at any and every hour; I am the lord chancellor of England."

"Ah, ah!" laughed the janitor, as he shut the entrance gates in the noble lord's face, "we've got four of 'em inside already!"

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions, and except those Opinions in which no Important Legal Principles are Discussed of Interest to the Profession at Large.

1. ADMINISTRATION—Sale of Land in Foreign State.—While the heirs of an intestate hold the land of an intestate subject to the unsatisfied claims of creditors until the same are paid, or barred by the lapse of time or the failure of creditors to take the proper steps, yet they do not hold such land in trust for the creditors; and therefore a court of equity has no jurisdiction to compel them to convey land of the intestate, located in another State, to a special commissioner, to be appointed by the court, for the purpose of having such land sold to pay the debts of the intestate, though the estate is insolvent, but the creditors must seek relief in the courts of the State where the land is located.—ROBINSON V. JOHNSON, Tenn., 52 S. W. Rep. 704.

2. ADVERSE POSSESSION—Presumptions and Burden of Proof.—Where plaintiff, in an action to recover possession of real property, shows ownership of the legal title, the presumption of his seisin will continue until it is shown that he has been disseised, and the burden of proof is on defendant claiming title by adverse possession to show that his entry was sufficient to disseise plaintiff, and that his possession continued to be adverse for more than 10 years before action.—ALTSCHUL V. O'NEILL, Oreg., 58 Pac. Rep. 95.

3. ARBITRATION—Power of One Joint Owner to Consent for All.—A joint owner with others of a water company, owning property and franchises in a city, cannot bind his co-owners by his consent to an arbitration with respect to such property and franchises without their express authority; and a general agency to have the custody and management of the property does not confer such authority.—CITY OF MOBILE V. WOOD, U. S. C. C., S. D. (Ala.), 95 Fed. Rep. 537.

4. ATTACHMENT—Attorney — Indemnity.—Where an attorney places a writ of attachment in a sheriff's hands, and requests him to attach certain goods, knowing that the goods are claimed by the debtor's brother, and does not refer the officer to his client, the attorney becomes personally liable to indemnify the officer against the consequences of wrongful attachment.—HIGGINS v. RUSSO, Conn., 43 Atl. Rep. 1050.

5. BANKS AND BANKING—Insolvency—Recovery of Deposit from Receiver.—To authorize the recovery of a general deposit from the receiver of an insolvent bank on the ground that the bank was insolvent, and known to be so by its officers, when the deposit was received, and that the fraud authorized a rescission of the contract by the depositor, the thing deposited, or its proceeds, must be capable of identification in the hands of the receiver, or it must appear that the funds coming into his hands were increased by that amount.—QUIN v. EARLE, U. S. C. C., E. D. (Penn.), 95 Fed. Rep. 728.

6. BANKRUPTCY—Assets of Estate—Proceeds of Attachment.—Where a petition in bankruptcy is filed against an insolvent debtor within four months after the levy of an attachment on his property, and he is adjudged bankrupt, and the attachment is thereby dissolved, but in the meantime the sheriff, under the attachment, has sold the property to a *bona fide* purchaser for value, and collected the proceeds, such proceeds constitute a part of the estate in bankruptcy, and must be recovered by the trustee when appointed.—IN RE FRANKS, U. S. D. C., S. D. (Ala.), 95 Fed. Rep. 635.

7. BANKRUPTCY—Estoppel.—Where a debtor has made a general assignment, a creditor who goes into the State court having jurisdiction of the estate assigned, for the purpose of attacking certain alleged preferences as fraudulent, does not thereby waive his right to file a petition in involuntary bankruptcy against the assignor, nor preclude himself from attacking the same preferences in the proceedings in bankruptcy.—LEIDIGH CARRIAGE CO. v. STENGEL, U. S. C. C. of App., Sixth Circuit, 95 Fed. Rep. 637.

8. BANKRUPTCY—Examination of Bankrupt.—Where a person against whom indictments are pending in a State court is adjudged bankrupt on an involuntary petition, and brought before the referee in bankruptcy for examination, he cannot be compelled to answer any questions propounded on such examination, where his answers would tend to criminate him on the trial of the pending indictments.—IN RE SCOTT, U. S. D. C., W. D. (Penn.), 95 Fed. Rep. 815.

9. BANKRUPTCY — Exemptions — Homestead.—Under Bankruptcy Act 1898, § 6, providing that "this act shall not affect the allowance to bankrupts of the exemptions which are prescribed by the State laws in force at the time of the filing of the petition," the extent and the duration of a homestead allotment made in a court of bankruptcy are the same as prescribed by the law of the State. The bankruptcy act neither enlarges nor diminishes the exemption under the laws of the State.—IN RE WOODARD, U. S. D. C., E. D. (N. Car.), 95 Fed. Rep. 260.

10. BANKRUPTCY—Exemptions—Partnership Assets.—Under a statute (Rev. St. Wis. § 2982, subd. 8) exempting from execution "the stock in trade of any merchant, trader, or other person, used and kept for the purpose of carrying on his trade or business, not exceeding $200 in value," in case of the bankruptcy of a mercantile partnership, where the firm has stock in trade, but there are no individual assets, each partner, with the consent of the other, is entitled to have the statutory exemption set apart to him out of the firm property.—IN RE FRIEDERICK, U. S. D. C., W. D. (Wis.), 95 Fed. Rep. 282.

11. BANKRUPTCY—Fee to Attorney of Involuntary Bankrupt.—Under Bankruptcy Act 1898, § 64, authorizing the allowance of a reasonable attorney's fee "to the bankrupt in involuntary cases while performing the duties herein prescribed," a reasonable fee may be allowed to the attorney of an involuntary bankrupt for his services in drawing the schedules and making copies of the same, and also for attending the bankrupt upon the latter's examination before the referee.—IN RE MICHEL, U. S. D. C., E. D. (Wis.), 95 Fed. Rep. 803.

12. BANKRUPTCY—Involuntary Proceedings—Corporations.—A corporation which owns and maintains a private hospital for consumptives, conducting its business for profit, and not as a charity, furnishing to its patients the usual accommodations of a hotel, and treating their diseases chiefly by the inhalation of an antiseptic vapor, chemically prepared on the premises, though not a "manufacturing" corporation, within the meaning of section 4 of the bankruptcy act (30 Stat. 547), is a corporation "engaged principally in trading or mercantile pursuits," and may be adjudged bankrupt on involuntary proceedings against it.—IN RE SAN GABRIEL SANATORIUM CO., U. S. D. C., S. D. (Cal.), 95 Fed. Rep. 271.

13. BANKRUPTCY—Opposition to Discharge.—Where the bankrupt, more than four months before the commencement of the proceedings, had transferred a stock of goods to his wife, and his schedule in bankruptcy stated that he had no assets of any kind, held, that such transfer, although it may have been void as to creditors, was valid as to the bankrupt, and, therefore, in the absence of evidence of intentional wrong on his part, his oath to the schedule was not such a false oath as would forfeit his right to a discharge.—IN RE CRENSHAW, U. S. D. C., S. D. (Ala.), 95 Fed. Rep. 632.

14. BANKRUPTCY—Partnership — Dissolution.—Under Bankruptcy Act 1898, § 5, providing that a partnership may be adjudged bankrupt "during the continuation of the partnership business, or after its dissolution and before the final settlement thereof," there is no final settlement of a firm's business so long as debts remain unpaid, although the assets of the partnership have been swept away by executions, and it has long since ceased to do business, and has been dissolved by the partners.—IN RE LEVY, U. S. D. C., N. D. (N. Y.), 95 Fed. Rep. 812.

15. BANKRUPTCY—Partnership Petition—Non-Joinder of Parties.—Where certain of the members of a dissolved partnership file their voluntary petition in bankruptcy, asking for an adjudication of themselves and also of the firm, but no notice of the proceedings is given to the other partners, who do not join in the petition, an adjudication that the petitioners, "as copartners and as individuals," be declared bankrupt, is erroneous, and will be vacated on motion.—IN RE ALTMAN, U. S. D. C., N. D. (N. Y.), 95 Fed. Rep. 263.

16. BANKRUPTCY—Preferences—Dissolution of Liens.—Where the sureties on the official bond of an insolvent and defaulting town treasurer paid the amount of his defalcation, and received from him, with knowledge of his insolvency, a judgment note for the amount so paid, and caused judgment to be entered thereon and execution issued and levied, upon learning that there were other judgment notes of the debtor outstanding, and five days thereafter the debtor filed his voluntary petition, and was adjudged bankrupt, held, that the judgment and levy were void, under section 67f of the bankruptcy act of 1898, and that the property levied on, or the proceeds of its sale, should go to the trustee in bankruptcy for the benefit of the general creditors of the estate.—IN RE RICHARDS, U. S. D. C., W. D. (Wis.), 95 Fed. Rep. 258.

17. BANKRUPTCY—Priority of Claims—Debt to County.—A State insolvency law, although its operation upon insolvents is suspended during the existence of the national bankruptcy law, remains a "law of the State," within the meaning of Bankrupt Act, § 64b(5), which gives priority of payment out of bankrupts' estates to debts which are entitled to priority under the "laws of the States or the United States;" and consequently, where a law of the State makes a debt due to a county a preferred claim in insolvency, it will be entitled to priority of payment in bankruptcy.—IN RE WRIGHT, U. S. D. C., D. (Mass.), 95 Fed. Rep. 807.

18. BANKRUPTCY—Set-Off of Claims.—Where the trustee of a bankrupt corporation is prosecuting an action against another corporation for goods sold, a creditor of the bankrupt cannot have the value of the property credited on his claim against the bankrupt, and have the action dismissed, on the contention that the goods were bought by him from the bankrupt, and sold by him to the other corporation, when it appears that he was an officer of the bankrupt corporation, and in charge of its sales, and at the same time an officer and agent of the purchasing corporation.—IN RE FT. WAYNE ELECTRIC CORP., U. S. D. C., D. (Ind.), 95 Fed. Rep. 264.

19. BILLS AND NOTES—Note Payable after Death of Maker.—An instrument in the form of an ordinary promissory note is not testamentary in character, nor is it rendered invalid as a note because the date of payment is a specified length of time after the death of the maker.—CRIDER V. SHELBY, U. S. C. C., D. (Ind.), 95 Fed. Rep. 212.

20. CARRIERS—Passenger—Stopping at Station—Negligence.—Where a train stops at a station for the purpose of taking and setting down passengers, and intending passengers are notified to get aboard, a starting of the train before all have had a reasonable time to get in the cars is negligence, although the train had not stopped at its usual stopping place at the station.—ALABAMA G. S. R. CO. V. SINIARD, Ala., 26 South. Rep. 689.

21. CARRIERS OF PASSENGERS—Negligence—Riding on Platform.—It is not negligence *per se* for the passenger to ride upon the platform of an electric street-railway car, nor to get up and go there from inside the car before the car has stopped, to await an opportunity to alight.—SCOTT V. BERGEN COUNTY TRACTION CO., N. J., 43 Atl. Rep. 1060.

22. CONSTITUTIONAL LAW—Interstate Commerce—Municipal Ordinance—License Tax.—An ordinance of a municipal corporation requiring persons or firms soliciting orders on behalf of manufacturers of goods to take out a license and pay a tax is an exercise, not of the police power, but of the taxing power; and, when enforced against a person or firm soliciting orders for a manufacturer of goods in another State, it imposes a tax upon, and is a regulation of, interstate commerce, in violation of the provisions of the constitution of the United States.—IN RE TINSMAN, U. S. C. C., N. D. (Cal.), 95 Fed. Rep. 648.

23. CONTRACTS—Construction.—When a written contract is entirely prepared by one of the parties, and accepted as thus prepared by the other, any doubt as to the meaning of provisions therein is to be resolved against the party preparing it.—WILSON V. COOPER, U. S. C. C., D. (Neb.), 95 Fed. Rep. 625.

24. CONTRACT—Liquidated Damages—Penalty.—Where a contract contains a large number of stipulations to be performed, of varying degrees of importance, and for the breach of some of which the damages are readily ascertainable, while as to others they are not, a single sum stipulated as damages for a breach, and applicable alike to each of the covenants, will be treated as a penalty, and in an action for a breach only the actual damages proved are recoverable.—EAST MOLINE CO. V. WEIR PLOW CO., U. S. C. C. of App., Seventh Circuit, 95 Fed. Rep. 250.

25. CONTRACT—Performance—Abandonment.—Where a contract for cutting, booming and delivering logs provides for payment in installments, a failure to pay an installment when due is not such a breach of the entire contract as to authorize the contractor to refuse to proceed further, and to recover the profits which he would have earned had the contract been fully performed on his part. In such case the contractor may abandon the work, and recover for what has already been done under it; but mere non-payment of money due on such installment is not, of itself, such denial of the rights of the contractor to continue the performance of the services under the contract.—BEATTY V. HOWE LUMBER CO., Minn., 79 N. W. Rep. 1013.

26. CONTRACT TO SELL LAND—Deposit.—Where plaintiff contracts to sell certain land, and furnish abstract showing good title, and defendants deposit money to be forfeited to plaintiff on failure on their part to perform the contract, and defendants' counsel object to the title as shown by the abstracts, and no effort is made to cure the defects, plaintiff is not entitled to the deposit as forfeited.—GREENVILLE NAT. BANK V. PARTAIN, Tex., 52 S. W. Rep. 648.

27. CORPORATIONS — Authority of President — Mortgage.—A mortgage of corporation property, executed by the president without the knowledge of the directors, and ratified by resolution of such directors after the corporation had become insolvent and suspended business, and the mortgagee had notice of such insolvency and suspension, is invalid as against a receiver in insolvency, under Corporation Act, § 64, which declares void all transfers of property made by a corporation after insolvency or suspension of its ordinary business, where the transferee had notice of the insolvency or suspension.—HOWELL V. KEEN, N. J., 43 Atl. Rep. 1070.

28. CORPORATIONS—Fraudulent Purchase by Director.—Defendant was owner of the good will and part of the fixtures of a newspaper, the remainder of the plant being owned by his father. Defendant organized a corporation for the purpose of buying the newspaper, and obtained control of a majority of the stock. Himself and two of his friends were elected directors. Defendant and his father sold the plant to a third person, and defendant purchased it from the vendee in behalf of the corporation. The other two directors were under defendant's control. The price paid for the plant by the corporation was a fair one. Held, that the sale should be set aside as constructively fraudulent on the other stockholders.—STANLEY V. LUSE, Oreg., 58 Pac. Rep. 75.

29. CORPORATIONS — Statutory Liability of Stockholders.—The course of federal decision for many years has been in the direction of upholding and enforcing extraterritorially the provisions of State statutes creating a liability on the part of stockholders in corporations for corporate debts, according to the fair intendment of such laws.—HALE V. HARDON, U. S. C. C. of App., First Circuit, 95 Fed. Rep. 747.

30. DAMAGES—Agreed Penalty for Breach of Contract.—Under Civ. Code, §§ 1670, 1671, making void contracts which fix the amount of damages for breach, a contract of guaranty by defendant to pay the penalty prescribed for the breach of a lease is void, and does not bind defendant to pay even the actual damages incurred by such breach.—JACK V. SINSHEIMER, Cal., 58 Pac. Rep. 130.

31. DEED—Dedication—Reservation in Deed.—A reservation in a deed, in form, "reserving from this grant the right of way over a strip of land thirty feet wide on the westerly line of said tract of land for canal or road purposes, both or either," does not operate of itself as a dedication to the public, and thereby conclude the owner from using such strip for the purposes mentioned in the reservation.—TAFT V. TARPEY, Cal., 58 Pac. Rep. 24.

32. DEED—Execution—Competency of Grantor.—The mere fact that previous to the time of the execution of a deed the grantor had been a heavy drinker, and occasionally got drunk, when it is shown that at the time of its execution he was apparently sober, and that at times prior thereto, when consulting with his attorney, he had shown no evidence of intoxication, or enfeebled mental condition, is not sufficient to vacate a deed for want of competency to execute it.—COOMBE'S EXR. V. CARTHEW, N. J., 43 Atl. Rep. 1057.

33. DEED—Gift—Delivery.—When defendant, then an unmarried woman, was living with her father, and keeping house for him, he executed a deed to her conveying the home place. She testified that he handed her the deed, telling her it would secure a home for her if anything should happen to him; that she placed it

with other papers, both of her father's and her own, and afterwards it could not be found. After her father's death it was found by a third person in a place containing papers of both father and daughter. Held, that such evidence warranted a finding that the deed had been delivered.—REED v. SMITH, Cal., 58 Pac. Rep. 189.

34. DESCENT AND DISTRIBUTION—Distribution to a Mortgagee—Intervention by an Interested Party—Appeal by One not a Party to the Distribution Proceedings.—A mortgagee of a testatrix cannot intervene in the hearing of a petition for distribution of the estate without filing some pleading or statement as to the grounds upon which he claims right to be heard.—IN RE CROOKS' ESTATE, Cal., 58 Pac. Rep. 89.

35. DESCENT AND DISTRIBUTION—Life Sentence—Effect on Civil Rights.—Under Pen. Code, § 674, which provides that a person sentenced to imprisonment in the State prison for life is thereafter deemed civilly dead, a person who is serving a life sentence at the time of his father's death does not inherit from him.—IN RE DONNELLY'S ESTATE, Cal., 58 Pac. Rep. 61.

36. DIVORCE—Desertion—What Constitutes.—Where a separation has been occasioned by cruelty of the husband to the wife, to an extent sufficient to support a decree for divorce against him, he cannot successfully claim that her absence from him for over two years thereafter is a statutory desertion.—CRICKLER v. CRICKLER, N. J., 43 Atl. Rep. 1064.

37. ELECTION AND VOTERS—Conduct of Election.—The inspectors of election, without authority, appointed an instructor, to whom the ballots were intrusted, and who had free access to the voters, even after they passed into the booths. The statute requires one inspector to keep possession of the ballots, and hand them to the voters. The instructor talked with voters while in the booths, with the door open, and himself standing in the door. Held, that the election was illegal, notwithstanding everything was done in good faith, and there was no attempt to influence voters.—ATTORNEY-GENERAL v. KIRBY, Mich., 79 N. W. Rep. 1009.

38. EMINENT DOMAIN—Measure of Damages.—In proceedings to condemn land which is occupied by a saloon, the damages are not the value of the land for that specific purpose, but its general market value as determined by its adaptability to any and all legitimate purposes to which it might be applied.—MCKINNEY v. MAYOR, ETC. OF NASHVILLE, Tenn., 52 S. W. Rep. 781.

39. EQUITY—Administration.—Ordinarily a bill in equity will not lie to compel personal representatives to satisfy a debt of their decedent, since the remedy at law is adequate.—BEDFORD QUARRIES CO. v. THOMLINSON, U. S. C. C. of App., Seventh Circuit, 95 Fed. Rep. 208.

40. EXECUTION SALE—Unrecorded Mortgage.—A member at auction sale, knowing of an unrecorded mortgage, can avail himself of the equities of the creditor not having knowledge of the same at the time of the levy of the execution.—BARNETT v. SQUYRES, Tex., 52 S. W. Rep. 612.

41. EVIDENCE—Negligence—Photograph.—In an action against a street railroad company for negligence in allowing the rails of its track to project above the roadway, a photograph of the street, including the place of the accident, is not admissible to show the height of the rails and the condition of the roadway, without any evidence as to its accuracy.—CUNNINGHAM v. FAIR HAVEN & W. R. CO., Conn., 43 Atl. Rep. 1047.

42. FEDERAL COURTS—Jurisdiction.—It is sufficient to sustain the jurisdiction of a circuit court, where the requisite jurisdictional facts are shown by the complaint, that it does not at any time thereafter satisfactorily appear to the court that the suit does not really and substantially involve the jurisdictional amount.—MAFFET v. QUINE, U. S. C. C., D. (Oreg.), 95 Fed. Rep. 199.

43. FEDERAL COURTS—Rules of Decision—Opinion of Supreme Court.—Where the questions arising in a suit in a circuit court are the same as those involved in a suit between other parties which has been determined by the supreme court, and the evidence material to such questions is substantially the same, the decision of the supreme court, while it does not render the questions *res judicata*, constitutes a precedent which should be followed by the inferior court.—ANGLE v. CHICAGO, ETC. RY. CO., U. S. C. C., W. D. (Wis.), 95 Fed. Rep. 214.

44. FRAUDULENT REPRESENTATION—Arbitration.—The misrepresentation to another of the contents of a writing, which both have the opportunity and ability to read, and which both sign, where the one does not fraudulently prevent the other from reading it, does not vitiate the writing.—DUNHAM LUMBER CO. v. HOLT, Ala., 26 South. Rep. 663.

45. FRAUDULENT CONVEYANCES — Change of Possession.—Where a joint owner of personalty which is in the possession of another joint owner sells his interest, the purchaser's failure to take possession does not, as against execution creditors of the seller, avoid the sale, under Civ. Code, 4491, providing that every transfer of personal property by a person in possession or control of the property shall be conclusively presumed to be fraudulent if not followed by actual and continued change of possession.—YANK v. BORDEAUX, Mont., 58 Pac. Rep. 42.

46. FRAUDULENT CONVEYANCE BY HUSBAND TO WIFE.—A gift by a wife to her husband of money, without any reservation in her favor, or any agreement to invest it for her benefit, is not sufficient to uphold a conveyance of land from the husband to the wife, made many years later, as against the creditors of the husband.—STACKER v. WILSON, Tenn., 52 S. W. Rep. 709.

47. GIFTS—Evidence.—Upon the production of a bank box containing a sum of money, which is placed in an envelope that is indorsed in the name of a third person to the knowledge of the deceased, and his claim is otherwise supported by testimony, it will be upheld, as against the executor of the deceased, and such third person decreed entitled to the possession thereof.—SUCCESSION OF BIDWELL, La., 26 South. Rep. 692.

48. GUARANTY — Delivery in Escrow — Action.—Defendant, in consideration of the release of an attachment of property of third parties, guarantied in writing the payment of any judgment that might be recovered by plaintiff against such parties, and delivered the guaranty to the deputy sheriff, with the agreement that if a satisfactory bond or receipt should be given on the return of the counsel of such third parties, or the property should remain *in statu quo* it should be returned. The property remained *in statu quo* until, and long after, counsel returned. Held, that the contract not being delivered to plaintiff as a present, operative instrument, except on conditions named, no action could be maintained thereon.—ATWATER v. HEWITT, Conn., 44 Atl. Rep. 34.

49. HUSBAND AND WIFE—Contract of Separation.—A contract of separation, made between a husband and wife, where it was agreed that as a consideration for the transfer of certain savings-bank books by the husband to the wife she was to leave her relatives and friends, and live among strangers, until he should be willing to take her to his own home, no cause for their separation appearing, and the evident purpose of the agreement being, not for the termination or suspension of their relations as husband and wife, but for the concealment of them, will not be enforced in an action by the wife to recover damages for its breach, as, by its terms, they were voluntarily to live apart without adequate cause, and for purposes which are against good morals and the public welfare.—BOLAND v. O'NEIL, Conn., 44 Atl. Rep. 15.

50. HUSBAND AND WIFE—Mortgage—Agreement to Support.—A mortgage executed by a husband to secure the performance of an agreement to support his wife

is a lawful undertaking.—HANN v. CRICKLER, N. J., 43 Atl. Rep. 1063.

51. HUSBAND AND WIFE—Trust.—In an action against both husband and wife by a judgment creditor of the husband to enforce a resulting trust against the land of the wife for the payment of the judgment, on the ground that the consideration for the grant to the wife was paid by the husband, neither the husband nor the wife can be examined as a witness for the plaintiff without the consent of the other spouse.—NATIONAL GERMAN-AMERICAN BANK OF ST. PAUL v. LAWRENCE, Minn., 79 N. W. Rep. 1016.

52. JUDGMENT—Set-Off.—The power to set off judgment in favor of defendant against plaintiff against a judgment of plaintiff against defendant, not being conferred by statute, will be exercised by the courts in a proper case under their equitable powers.—DUTTON v. MASON, Tex., 52 S. W. Rep. 651.

53. LIENS—Improvement of Realty.—Where a father having bought land, and given possession to his daughter and her husband, promising to deed it to the daughter, the husband expends money in improving it, on the strength of the promise, on failure by the father to convey, the husband has a lien on the land for the amount of the expenditures.—MECHANICS' SAV. BANK & TRUST CO. v. SCOGGIN, Tenn., 52 S. W. Rep. 718.

54. LIFE INSURANCE—Rescission of Compromise.—Where an insurance company, by fraudulent representations, effects a compromise with a beneficiary, and pays the agreed sum, the beneficiary cannot rescind the contract, and recover on the policy, without giving up what he has received under the compromise.—WESTERFELD v. NEW YORK LIFE INS. CO., Cal., 58 Pac. Rep. 92.

55. LIMITATION OF ACTIONS — Renewal of Debt.—A bank loaned a street-railway company large sums of money at various times, the loans being made in the form of overdrafts, the account being carried in the name of the treasurer of the company, though it was regarded both by the bank and company as the debt of the company. Subsequently the company gave the bank its note covering all the indebtedness. Held, that the note was merely a continuance of the existing indebtedness, and limitation began to run from the time the money was borrowed.—SANTA ROSA NAT. BANK v. BARNETT, Cal., 58 Pac. Rep. 85.

56. MARRIAGE — Presumption.—The presumption of marriage, which ordinarily arises when a man and woman live together as husband and wife, represent themselves as such, and children are born to them, does not arise when one of them is already legally married to another.—MOORE v. MOORE, Tenn., 52 S. W. Rep. 778.

57. MECHANICS' LIENS — Foreclosure.—One to whom claims for mechanics' liens have been assigned, so that he may sue to enforce them with his own in one action, may maintain the suit in his own name, and obtain a personal judgment against a defendant who is personally liable, and his assignors will be bound by the judgment.—HOUSE v. SCHULZE, Tex., 52 S. W. Rep. 654.

58. MINES—Extralateral Rights.—In order that a vein may be followed extralaterally, identity throughout is essential, and the vein must be continuous; but the continuity may be interrupted, provided the interruption does not prevent the tracing of the vein through the fissure as geologically identical.—BUTTE & B. MIN. CO. v. SOCIETE ANONYME DES MINES DE LEXINGTON, Mont., 58 Pac. Rep. 111.

59. MORTGAGES — Assignment of Debt.—Defendants executed eight notes to complainant's assignor, and later, on being informed that these notes had been lost, executed another note for the aggregate amount in their place, securing it by a mortgage. Complainant's assignor transferred the mortgage, expressly assigning the debt, and transferred the substituted note. Subsequently the original notes were found, but were retained by the assignor. Held, that the transfer of mortgage and substituted note operated as an assignment of the debt, and complainant is entitled to collect it by foreclosure of the mortgage.—FORD v. MCDOWELL, Tenn., 52 S. W. Rep. 694.

60. MUNICIPAL BONDS — Action by Holder for Judgment.—A complaint filed in a federal court, in an action of which it has jurisdiction, alleging that plaintiff is the owner of coupons from negotiable bonds duly issued in conformity to law by a California irrigation district, and that such coupons are past due and unpaid, states a cause of action which entitles the plaintiff to a judgment against the district. The fact that such coupons are, under the statute, to be paid from a special fund, to be raised by the officers of the district in a special manner, does not impose on the plaintiff the necessity of alleging that such fund has been raised, or that the officers have failed to perform their duty to raise it, nor does the fact that payment can in either case only be enforced by means of a *mandamus* affect the plaintiff's right to a judgment, since in a federal court such relief can only be afforded after a judgment as a means for its enforcement.—HERRING v. MODESTO IRR. DIST., U. S. C. C., N. D. (Cal.), 95 Fed. Rep. 705.

61. MUNICIPAL BONDS—Indebtedness of Corporation at Time of Issuance.—The test of the validity of municipal bonds, for the purpose of determining whether they are to be included as a part of the outstanding indebtedness of the municipality at the time a subsequent issue was made, is not whether they were recognized as valid by the officers of the corporation, but whether they were legally enforceable; and where the indebtedness of the corporation exceeded the constitutional limit when they were issued, they at no time constituted a legal indebtedness, though they may have been afterwards paid, and while their validity had not been questioned.—GERMAN INS. CO. OF FREEPORT, ILL., v. CITY OF MANNING, IOWA, U. S. C. C., S. D. (Iowa), 95 Fed. Rep. 597.

62. MUNICIPAL CORPORATIONS—Contract with Water Company—Construction.—A contract between a city and a water company, chartered and given the right to lay its mains in the streets of the city by an act of the legislature, which merely bound the company to maintain a certain number of fire hydrants, for which the city agreed to pay a specified rental for a term of years, and fixed a maximum price, beyond which the company agreed it would not charge for water furnished for domestic use during the term, but which contained no grant of any privilege to the company, and no contract for the furnishing of water to the inhabitants of the city, nor agreement that the city should not do so, is not violated by the erection or purchase of waterworks by the city for the supplying of water to its inhabitants and for its own use, and affords no ground for an injunction to restrain the city from so doing in pursuance of authority contained in its charter; the city not having refused to pay the stipulated rentals.—BIENVILLE WATER SUPPLY CO. v. CITY OF MOBILE, U. S. C. C., S. D. (Ala.), 95 Fed. Rep. 539.

63. MUNICIPAL CORPORATIONS—Grant of Right to Use Street.—In the absence of legislation, a municipality has no power to grant a license to individuals to erect and maintain a pair of stock-weighing scales on a public street for their personal profit.—STATE v. STROUD, Tenn., 52 S. W. Rep. 697.

64. MUNICIPAL CORPORATIONS—Officers.—Where the board of fire commissioners, by resolution, illegally reduces the salary of the chief engineer in the fire department, and the chief, having agreed to work for the reduced amount, accepts his salary at the end of each month, he cannot recover the difference, the contract being entirely executed, even though the larger compensation was fixed by statute.—DE BOEST v. GAMBELL, Oreg., 58 Pac. Rep. 72.

65. PARTNERSHIP—Mortgage by Partner.—A mortgage executed by a partner individually conveys no title to firm property which can be enforced *in detinue*.—THOMASON v. SILVEY, Ala., 26 South. Rep. 644.

66. PARTY WALL—Construction of Deeds.—Plaintiff, in a deed to defendants, reserved the right to allow a cornice to project over defendants' land, and granted defendants the right to build against or upon his wall. Defendants, in a deed executed at the same time, granted plaintiff the right in regard to the cornice, and reserved the right to build on plaintiff's foundation wall. Held, that these deeds give defendants no right to remove bricks from plaintiff's wall, and insert timbers for the support of their building.—SIMONDS v. SHIELDS, Conn., 44 Atl. Rep. 29.

67. RAILROAD COMPANY—Injury to Trespasser on Track.—Where a person, either because of intoxication or a fit of epilepsy, falls down on a railroad track, he becomes a trespasser, and defendant railroad company is not liable for injuries caused, where its servants, after discovering such person on the track, used due care to stop the train and prevent the injury.—LOUISIANA W. E. RY. CO. v. MCDONALD, Tex., 52 S. W. Rep. 649.

68. RECEIVERS — Assistance, Writ of.—The receivers of a corporation are not entitled to a summary writ of assistance to recover property of the corporation held by persons not parties to the cause, and who in good faith deny the receiver's right to the possession, claiming it under a contract with the corporation.—MUSGROVE v. GRAY, Ala., 26 South. Rep. 643.

69. RECEIVERS FOR MINING CORPORATION — Appointment at Suit of Stockholder.—A court will not hold the property of a private corporation from the enforcement against it of liens and judgments of creditors by a receiver appointed at the instance of a stockholder in a suit brought ostensibly in behalf of all stockholders and creditors, unless the appointment of the receiver is followed by action indicating a purpose in good faith to secure the speedy payment of creditors; and where, in such a suit, a receiver was appointed, on the filing of the bill, for a corporation engaged in operating a mine, and required to make monthly reports, and after the lapse of six months no reports had been filed, no appearance entered by the corporation, and no further action taken by the complainant, a creditor whose lien on property of the corporation had been established by the decree of a State court will be permitted to enforce such lien.—COHEN v. GOLD CREEK, NEV. MIN. CO., U. S. C. C., D. (Nev.), 95 Fed. Rep. 580.

70. RES JUDICATA — Covenant.—A judgment in an action by the vendee of a water power against a third person for having diverted the waters of the stream is not *res judicata* in an action by the vendee against the vendor for a breach of warranty on the sale of the water power, said vendor not being a party to the action.—POLEV v. LACERT, Oreg., 58 Pac. Rep. 37.

71. SALE — Conditional Sales — Failure to Record.—Where a sale is made on condition that title shall remain in vendee until payment of price, in a State where such sales are not required to be recorded, as against third parties, and the property is removed to a State where registration is necessary, the condition is void, as to third persons in such State, unless recorded.—SANGER v. JESSE FRENCH PIANO & ORGAN CO., Tex., 52 S. W. Rep. 621.

72. SALES—Fraudulent Representations—Pleading.—To render representations made by a seller to the purchaser fraudulent, so as to avoid the sale, they must have been made with knowledge that they were untrue, or under circumstances from which the seller should have had such knowledge, and which necessarily impeach his good faith; and a pleading alleging the fraud as a defense to an action for the price is insufficient unless it alleges such knowledge or circumstances in such manner that issue may be taken thereon.—PATENT TITLE CO. v. STRATTON, U. S. C. C., D. (Colo.), 95 Fed. Rep. 745.

73. SET-OFF AND COUNTERCLAIM—Limitation.—Where defendant's claim in set-off was an existing debt not barred by the statute of limitations at the time plaintiff's action was begun, it will be a valid set-off, although the statutory period may have elapsed before the filing of the answer setting it up.—WALKER v. FEARHAKE, Tex., 52 S. W. Rep. 629.

74. TAX DEED—Redemption—Rents and Profits.—One in possession of land under a voidable tax deed is not accountable for rents thereof, until he has been paid or tendered the taxes, interest, and charges required for redemption.—RITCHIE v. WILL, Kan., 58 Pac. Rep. 118.

75. TRIAL—New Trial—Misconduct of Jurors.—Where it appears that the foreman of a jury, pending the trial, went to and returned from a dance with one of defendants, and during the night they got drunk together, and were quite intimate, and that after the discharge of the jury the foreman said to the defendant with whom he attended the dance that he had brought in a verdict for him, and that the foreman and another juror during the trial drank with defendants, and went visiting with them, plaintiff is entitled to a new trial.—WRIGHT v. EASTLICK, Cal., 58 Pac. Rep. 87.

76. TRUST—Recital in Deed.—There is a trust in favor of the wife and her children where land is bought with her separate estate, and title is taken in the name of her husband, on his agreement to hold it for her and the children, and his representation that it would be better to have title in him if she wanted to sell.—ARNOLD v. HARRIS, Tenn., 52 S. W. Rep. 715.

77. VENDOR'S LIEN—Waiver.—The filing and allowance of a claim generally against the estate of a deceased purchaser for the balance of the purchase price of land do not constitute a waiver by a vendor of his right to a vendor's lien therefor, under Civ. Code, § 3046, which provides that one who sells real property has a vendor's lien thereon, independent of possession, for so much of the price as remains unpaid and unsecured otherwise than by the personal obligation of the buyer.—SELNA v. SELNA, Cal., 58 Pac. Rep. 16.

78. WILL—Construction — Estoppel. — Under a will giving to testator's wife all his property "during her natural life, and at her death she can dispose of the property as she wants to," she has an unlimited power of disposition, and can dispose of the property by deed before her death.—MOSELEY v. STEWART, Tenn., 52 S. W. Rep. 671.

79. WILL — Nature of Estate Created — Vested Remainder.—A testator devised real estate to his wife for life, and directed that upon her death it should "be sold, and the proceeds divided among his children, the girls receiving $100 each more in said division than the boys, and that the shares of the girls be settled upon trustees for their support, the interest and a small portion of the principal to be paid to them annually, and at their death the balance remaining to be paid to their children." Held, that the testator's children living at his death severally took a vested, transmissible interest, and, upon the death of either before the life tenant, such interest would go to his heirs.—REDMOND v. COLES, Tenn., 52 S. W. Rep. 660.

80. WILLS—Power to Sell Property.—A will provided that the land of the testator should go to his wife "during her natural life, and all the live stock of every description; also all the household furniture, and all other items not particularly mentioned and otherwise disposed of in this will, during her natural life as aforesaid; she, however, first disposing of a sufficiency thereof to pay my just debts as aforesaid; and at the death of my said wife all the property hereby devised or bequeathed to her as aforesaid, or so much thereof as may then remain unexpended, to my children. And, lastly, I hereby constitute and appoint my wife to be executor for this, my last will." Held, that as to the power of disposition given the wife no distinction was made between the personalty and realty, and that such power was not limited to the life estate given her, but extended to the entire title, including the fee of the land.—SMITH v. MCINTYRE, U. S. C. C. of App., Sixth Circuit, 95 Fed. Rep. 585.